

CERTIFICATION OF LEAD-BASED PAINT ABATEMENT

The _____ certifies that all units, common areas, and
Name of Housing Authority
exteriors which are to be modernized and which have been determined to contain lead-
based paint hazards, as defined in the Lead-Based Paint Poisoning Prevention Act, as
amended, will be abated in accordance with all Federal, State and local requirements.

Date_____
Executive Director

THE HISTORY OF THE UNITED STATES

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Federal Register

Wednesday
April 18, 1990

Part III

Department of Transportation

Coast Guard

46 CFR Parts 10 and 15

Licensing of Officers and Operators for
Mobile Offshore Drilling Units; Interim
Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 81-059a]

RIN 2115-AB91

Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of notice suspending effective date and interim final rule.

SUMMARY: This rulemaking deals solely with the licensing of officers on mobile offshore drilling units (MODUs) and the manning of these vessels. The licensing structure implements National Transportation Safety Board (NTSB) recommendations for the establishment of personnel qualifications and manning regulations for this type of vessel. Compliance with these minimum standards will ensure that qualified individuals are on board to deal with marine safety related matters.

DATES: Comments must be received on or before June 18, 1990. This regulation is effective on July 1, 1990, except §§ 15.301, 15.520, and 15.810 which will be effective on January 1, 1991. A notice suspending the Interim Rule's April 1, 1989 effective date published on February 28, 1989 (54 FR 8334) is withdrawn, effective July 1, 1990.

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G-LRA-2/3600) [CGD 81-059a] U.S. Coast Guard, Washington, DC 20593-0001. Between 8:00 a.m. and 3 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-LRA-2), room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202)267-1477.

FOR FURTHER INFORMATION CONTACT: LCDR Gerald D. Jenkins, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G-MVP), phone (202)267-0224.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the name and address of the person making them, identify this notice [CGD 81-059a], the specific section of the proposal to which the comment applies, and the reason for the comment. Persons desiring an acknowledgment that their comment has been received

should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is confirmed.

Drafting Information

The principal drafters of this supplemental notice are: LCDR Gerald D. Jenkins, Office of Merchant Marine Safety, Security and Environmental Protection, and CDR Gerald A. Gallion, Office of Chief Counsel.

Background

The Notice of Proposed Rulemaking to completely revise licensing regulations in part 10 of title 46, Code of Federal Regulations, published on August 8, 1983 (48 FR 35920) included proposed rules which formalized the special industry licenses and extended their application to all mobile offshore drilling units. As a result of comments received, a separate Supplemental Notice of Proposed Rulemaking concerning the licensing of officers on MODUs and the manning of these vessels was published on October 24, 1985 (50 FR 43366). The Coast Guard received generally good support from the mobile offshore drilling industry. Forty-five written comments were submitted and in addition the International Association of Drilling Contractors (IADC) provided the detailed MODU On-Board Marine Task Analysis Report. An Interim Final Rule was published on October 16, 1987 (52 FR 38660). The Coast Guard received fifteen written comments to the Interim Final Rule. These comments demonstrated that additional changes were necessary in order to adequately address several subjects. A notice suspending the Interim Final Rule's effective date was published on February 28, 1989 (54 FR 8334) is hereby withdrawn. A second Supplemental Notice of Proposed Rulemaking published on May 20, 1989 (54 FR 25881) revised the offshore installation manager qualifications and MODU manning levels. It also, provided a procedure by which unlicensed individuals currently serving in positions requiring licenses can obtain the required credentials. Twenty comments received to the second supplemental notice of proposed rulemaking demonstrate the general acceptance of the rulemaking. This Interim Final Rule refines the rulemaking and permits the submission of additional public comment.

Specific Comment Areas

1. *Rulemaking comments:* The Coast Guard is grateful for the effort expended by the offshore drilling industry and

other interested parties in commenting on this rulemaking. The comments are on the whole clear, reasonable, and well documented. This interest and support has greatly enhanced the quality of the rulemaking.

2. *Interim Final Rule:* This rulemaking is being published as an Interim Final Rule (IFR). While no significant revisions are anticipated, an IFR will facilitate the submittal of additional comments to correct wording which may have established unintentional, and undesirable, requirements.

3. *Conversion of existing MODU licenses:* Comments were received which objected to the criteria proposed in the Supplemental Notice of Proposed Rulemaking (SNPRM) for the conversion of existing Mobile Offshore Drilling Unit (MODU) licenses. Listed among the criteria were the requirements that an applicant for license conversion document a set period of service upon each MODU type applied for, show recency of service, and, for a license authorizing service underway, document a minimum number of rig moves.

These criteria were objected to for a number of reasons. Current Master MODU and Mate MODU licenses are not restricted by MODU type. If the proposed criteria were applied, the authority currently held by many of these licensed individuals would be reduced. In addition, the documentation of service would be an onerous administrative burden for companies, particularly when documenting the service of those licensed individuals who have moved on to supervisory duties ashore. Individuals whose previous companies have ceased operations may not be able to obtain the necessary service documentation.

While urging the deletion of service requirements for the conversion of a license, the comments continue to support the documentation of required training course completion.

The Coast Guard agrees and has therefore revised the proposed conversion criteria. Persons holding Master MODU licenses will not be required to be examined or show qualifying service. They will only be required to present evidence of having completed the appropriate required training courses to convert the license to Offshore Installation Manager (OIM) Unrestricted with the Barge Supervisor (BS) endorsement. Persons holding Mate MODU licenses will not be required to be examined. They will only be required to present evidence of six months service in a supervisory position subsequent to issuance of the Mate MODU license and completion of the

appropriate required training courses to convert the license to OIM Unrestricted with the BS endorsement. Persons holding Mate MODU licenses who are unable to document six months service in a supervisory position subsequent to license issuance, will be required to present evidence of having completed the appropriate required training courses to obtain a license endorsed as Barge Supervisor.

These conversion criteria will, of course, mandate that companies verify that the licensed individual possesses the requisite skills and experience before being employed as OIM. It is anticipated that such verification will be made regardless of the individual's license.

Conversion of licenses can occur at any time after the effective date of the licensing requirements of the Interim Final Rule.

4. Effective dates of Interim Final Rule: The effective dates of the licensing and manning requirements of this Interim Final Rule have been staggered to permit the issuance of licenses for a period of six months before they will be required. The newly created licenses as OIM, BS, and BCO will be offered beginning on July 1, 1990. This will permit individuals to obtain original licenses or convert their current licenses before the manning requirements take effect. The manning requirements become effective on January 1, 1991. On the day the manning requirements take effect, only a valid license as OIM, BS, or BCO will be accepted. Vessel certificates of inspection will be revised as necessary.

5. Survival Suit and Survival Craft course: Comments were received which expressed a concern about the limited availability of Coast Guard approved Survival Suit and Survival Craft courses. The inability to schedule such a course was seen as likely to prevent many individuals from converting their licenses.

The Coast Guard agrees. The limited availability will also adversely impact upon those individuals seeking an original license. For that reason, prior to July 1, 1995, licenses will be issued and MODU licenses will be converted without this course being required. Such licenses will be endorsed on the reverse to indicate that, "A Coast Guard approved survival suit and survival craft course must be completed prior to renewal."

6. Single MODU license application evaluation office: The proposal to restrict MODU license application approvals to the Coast Guard Regional Examination Center (REC) New Orleans received strong support. Therefore, until

July 1, 1992, all MODU license applications will be evaluated and approved by that REC. Applications may be submitted to and the required examinations may be administered at any REC.

7. Cost of rulemaking: One comment took exception with the economic evaluation of the rulemaking stating that the costs of the rulemaking had been underestimated. The comment cited considerable administrative costs to the marine industry; however, no specifics or estimates have been provided. The Coast Guard considers the cost figures contained in the evaluation to be valid.

8. Employment assigned to—service as: One comment pointed out that through the combined use of "employment assigned to" and "service as" the service requirements indicated in the SNPRM were in fact duplicative and resulted in a requirement for excessive supervisory experience. The Coast Guard agrees and has in many cases halved the required supervisory experience in the IFR.

9. Adding qualification for additional MODU types: Comments were received which discussed the appropriate required service for individuals holding a license for service on one type of MODU who seek to add the license endorsement for a different type of MODU, e.g., an individual holding a license as OIM Bottom Bearing Units on Location seeking an endorsement as OIM Surface Units on Location.

It was stated in the comments that no additional experience is required when shifting from surface to bottom bearing units. The drilling operations and the loading and stability considerations were seen by the commenters as much simpler on bottom bearing units. Any required experience in jacking or preloading systems, it was argued, can be learned in the few rig moves which would be required for underway endorsements. The Coast Guard agrees and has revised the IFR accordingly.

The comments stated that additional experience is appropriate when shifting from bottom bearing units to surface units, because the drilling operations and the loading, mooring, and stability considerations are more complex. However, the comments also stated that, in consideration of the training required for the license endorsement for surface units and the presence of a licensed Barge Supervisor, the required service proposed in the SNPRM is excessive to the needs of safety. The Coast Guard agrees and has revised the IFR accordingly.

10. Lifeboatman: One comment stated that the Lifeboatman qualification required of an OIM, BS, and BCO was

inappropriate and that applicants for these licenses develop the requisite skills in the required Survival Suit and Survival Craft course. In addition, the commenter felt that the one year of service required for a Lifeboatman endorsement would place an unnecessary time constraint on a license applicant seeking to obtain the required service for licensure. This was seen as particularly true for those individuals seeking an underway endorsement. The Coast Guard agrees and has revised the IFR accordingly.

11. Rig moves required for an underway endorsement: Comments were received discussing the appropriate number of rig moves directed, while under the supervision of an experienced rig mover, required for an individual to adequately acquire and demonstrate the requisite rig moving skill. It was stated that this number should vary depending upon the individual's long-term or trainee status, with the trainee being required to make additional moves to obtain experience comparable to that of the long-term employee. The Coast Guard agrees and has revised paragraphs 10.470 (f) and (j) accordingly.

12. Service periods: In recognition of the industry practice of assigning individuals to a work period of two weeks, the rulemaking has been revised to state required service periods of less than one year in multiples of fourteen days.

13. Master or Chief Mate obtaining OIM endorsement: In response to comments received, the Coast Guard has reduced the MODU service and rig move requirements for licensed Masters and Chief Mates seeking an OIM endorsement. These reductions vary depending upon the OIM endorsement sought and are considered justified in light of the seamanship skills the officers already possess.

14. Senior company official: Several sections of the SNPRM require the recommendation of a senior company official. A definition of "senior company official" has been included in the IFR to provide clarification as to who this individual must be.

15. Stability course for OIM Bottom Bearing Units on Location: Comments were received which disagreed with the need for a stability course for a license endorsement as OIM Bottom Bearing Units on Location. It was stated that the limited stability knowledge required could be adequately demonstrated by the inclusion of appropriate questions in the license examination. Having such a course requirement would be an unnecessary expense for small drilling

contractors having only bottom bearing equipment. The Coast Guard agrees and has revised the IFR accordingly.

16. *Crane operator:* One comment urged that crane operator be included in the listing of supervisory positions used to qualify for a license endorsement as BS. It was pointed out that the crane operator performs important functions in each surface unit rig move. The Coast Guard agrees and has revised the IFR accordingly.

17. *Acknowledgment of service:* The IFR has been revised to clarify the fact that a Coast Guard acknowledgment of service does authorize a continuation of service for one year.

18. *Engineer service requirement:* Comments were received objecting to the limitation in the proposed manning scales published in the preamble to the SNPRM for the substitution of MODU engineers for assistant engineers only on voyages of 72 hours or less. This limitation had been created as a result of reductions made in the SNPRM to the amount of required qualifying service.

The comments urged that the experience requirement be lengthened so that the same licensed MODU engineers could be used on location and when underway. Adding persons who are unfamiliar with the MODU for a voyage causes scheduling difficulties and other problems associated with the replacement personnel's lack of familiarity with the unit's installed equipment.

The Coast Guard agrees and has revised the service requirements and authority to those provided in the October 16, 1987 IFR, except as noted below. The requirement for self-propelled unit service in paragraphs 10.542(a)(2) and 10.544(a)(3) have been retained. Service upon propulsion assisted units is accepted as a substitute for service upon self-propelled units.

Comments were received which recommended that a two tier qualification regimen be adopted. Under this recommendation, individuals would qualify for a chief engineer (MODU) license with four years of employment, but would be limited to service on voyages of not more than 72 hours. Once an additional two years of employment was obtained, the license would then be endorsed to permit service upon voyages of more than 72 hours.

The Coast Guard has chosen not to adopt this recommendation. The Coast Guard believes this complicated license qualification scheme would receive little use and would not receive wide industry support.

19. *Unlimited Chief Engineer of Any Horsepower:* The International Association of Drilling Contractors'

(IADC) comment urged that MODU engineers be allowed to advance to Chief Engineer of Any Horsepower, so as to allow service as Chief Engineer on a self-propelled unit.

The Coast Guard disagrees. Individuals holding a MODU engineer license and only serving on that type of vessel do not obtain the requisite experience with the wide variety of systems found on a conventional vessel and have not been examined on all these systems. Individuals seeking a Chief Engineer of Any Horsepower license, not restricted to MODUs, must advance through the grades of Third, Second, and First Assistant Engineer.

20. *Assistant engineer (MODU) on drillships:* The IADC comment urged that individuals holding a license as assistant engineer (MODU) be authorized to serve on drillships. In consideration of the increased qualifying service requirements in this IFR, the Coast Guard agrees and has revised the manning requirements of paragraph 15.520(j).

21. *Examination requirements:* Several changes have been made to Table 10.920-2, Subjects for MODU Licenses. These changes resulted from the analysis of required skills made by the contractor tasked with preparing the licensing examinations.

22. *Ballast control operator on submersible units:* The IADC comment urged that the proposed manning requirements be revised to exclude submersibles from the requirement to have a ballast control operator manning the control room while such a unit is under tow. In consideration of the nature of operations conducted in the submersible MODU control room, the Coast Guard agrees and has revised the IFR accordingly.

23. *Accepted college degrees:* Several comments urged the Coast Guard to expand the listing of degree programs which were substitutable for MODU service when qualifying for a license as OIM, BS, or BCO. There are several engineering degree programs, resulting in either a bachelor's degree or associate's degree, which develop the mathematical and engineering skills required by these license holders. Limiting the acceptance of degrees to marine engineering which is accredited by the Accreditation Board for Engineering and Technology (ABET) excludes several degree programs which have been traditionally used to fill the engineering staffs of drilling contractors.

The Coast Guard agrees and has adopted the wording, "A degree from a program in engineering or engineering technology which is accredited by the

Accreditation Board for Engineering and Technology * * *".

Other comments urged that the regulations accept any accredited program, not just those accredited by ABET. This would permit the acceptance of foreign degree programs and programs which have not sought ABET acceptance.

The Coast Guard partially agrees. It is, however, unwilling to make a blanket acceptance of programs accredited by any organization. There are numerous accreditation organizations in existence which apply a wide range of standards for accreditation. The ABET is the only accreditation organization for engineering programs recognized by the U.S. Department of Education—reference, Nationally Recognized Accrediting Agencies and Associations, February 1989. It is likely that organizations offering engineering degree programs will seek ABET accreditation. All the schools cited in the comments have ABET accreditation. To accommodate those individuals who have completed a program not accredited by the ABET, the regulations have been revised to permit Commandant (G-MVP) consideration for acceptance of education credentials from other programs.

24. *Acceptance of blowout prevention and well control courses:* Several comments were received on the regulatory provisions which accepted only U.S. Minerals Management Service (MMS) approved blowout prevention and well control courses. Those comments supported a loosening of that standard, pointing out that there are a number of non-approved training programs which provided similar training. The offshore drilling industry is frequently required by foreign nations to have its personnel attend training programs overseen by the foreign administrations. Failure to permit the substitution of this foreign training for MMS approved programs will result in some individuals being required to attend two training programs. Failure to accept this training will also mandate that, where industry personnel both work and reside overseas, the company or employee schedule and bear the costs of returning to the United States to receive training.

For a training program to be acceptable, the Coast Guard must have reason to believe that the training is effectively presented and adequately covers the subject material. In the case of the blowout prevention and well control training, the MMS approval provides this accreditation.

Comments proposed that the Coast Guard also accept certificates from IADC Co-Sponsored School programs or programs approved by the administration of a foreign coastal state. The Coast Guard is reluctant to accept industry accreditation because of a concern over the potential for abuse of this oversight authority, either by parties circumventing established industry oversight procedures or by industry organizations functioning as "diploma mills" without exercising appropriate oversight and control. Because of the potential for coastal state administrations to establish unacceptably low training standards or fail to exercise appropriate oversight and control, the Coast Guard is also reluctant to accept coastal state training as a substitute for the training required by this rule.

Comments are solicited on an acceptance by the Coast Guard of foreign blowout prevention and well control training programs.

25. Substitution of foreign nationals: At the request of the IADC, the following clarification is provided with regard to substitution of foreign nationals for licensed officers when U.S. Coast Guard certificated MODUs are operating in foreign waters. Current industry practice is to employ foreign nationals with equivalent qualifications as BS or BCO when operating at some overseas location. Coastal state regulations or policies sometimes require this. Current U.S. statutes and Coast Guard policy allow these substitutions when the MODU is deprived of the service of an individual (except the master and the radio officer) when on a foreign voyage, or when crewmember citizenship requirements have been waived for a particular MODU. Since the U.S. will be one of the first countries to issue MODU licenses, equivalent foreign licenses may not be available. Therefore, vessel operators will continue to be able to substitute foreign nationals with equivalent qualifications, experience and training at equivalent foreign schools, for the BS and BCO positions. Regulations relating to waiver of citizenship requirements for MODUs operating beyond the U.S. outer continental shelf were published on January 12, 1990 (55 FR 1210).

26. Arctic training: One comment urged that MODU officers in arctic, ice-affected areas be trained or experienced in arctic weather and ice operations. This training or experience would include structural design and the coordination of activities with ice engineers. The Coast Guard considers this knowledge to be an important factor

in arctic operations. However, the knowledge is too specialized for inclusion within the license qualification process. The MODU operating firms should ensure that this expertise and training are provided.

27. Oil spill response training: One comment urged that OIMs be required to obtain training in oil spill response. The comment states that a basic familiarity with oil spill contingency plans, response procedures, and basic containment and cleanup techniques should be required. The Coast Guard believes that the appropriate requirements for oil spill contingency planning and response training have already been promulgated by the MMS in title 30, Code of Federal Regulations §§ 250.42 and 250.43.

28. Qualifying supervisory positions: One comment urged that the supervisory positions considered as a qualification route to a license as OIM be limited to tool pusher, assistant tool pusher, driller, or barge supervisor. This was suggested because the OIM needs to be knowledgeable in well control procedures. The Coast Guard agrees that the OIM must possess this knowledge. However, the extended MODU employment and service requirements in combination with the required blowout prevention and well control course will impart this knowledge. The listing of qualifying supervisory positions is essentially that which has been in use since 1973.

29. Temporary licensing program: Several comments were received supporting the temporary licensing program as proposed in the SNPRM. It is felt that the program provides a reasonable time frame in which to mitigate the impact of the new licensing requirements on the offshore drilling industry. Qualified individuals in the industry will be afforded the opportunity to continue to utilize their valuable experience while obtaining the required licenses.

One comment objects to the temporary licensing concept. The comment states that these licenses provide, " * * * an open door for the offshore drilling contractors to continue to operate MODUs without properly trained staff for a period of one to five years."

The Coast Guard disagrees, a similar program proved effective when initiating licensing requirements for the operators of offshore supply vessels.

30. Acceptance of foreign training courses: A number of comments were received urging that the Coast Guard permit the substitution of foreign training for the required training

programs included in this rulemaking. The rulemaking requires that these courses be Coast Guard approved, or in the case of blowout prevention and well control, that the training program be MMS approved.

The Coast Guard does not currently approve foreign training programs. The approval process involves: an organization making application for the approval of a training program, see 46 CFR, subpart C; the Coast Guard reviewing for approval the curriculum, instructors, and facilities; and upon approval, the Coast Guard monitoring of the training program. Because of the significant increase in course approval activities likely to result, the Coast Guard believes that the matter of foreign course approvals should be the subject of a separate rulemaking.

Comments are solicited on the feasibility of Coast Guard "acceptance" of foreign training programs as satisfying the training requirements of this rulemaking. Acceptance would not involve the level of Coast Guard review given to approved training programs. As discussed in paragraph 24, this might involve the acceptance of training programs cosponsored by an industry organization or approved by a foreign coastal state.

31. Additional manning requirements: One comment stated that the regulations should require a barge engineer on self-elevating MODUs and a maintenance supervisor/assistant engineer on any nonself-propelled MODU. The Coast Guard disagrees and believes the requisite skills needed on board a MODU are available collectively through the combined skills of the OIM, BS, and BCO. The requirement for these additional licensed individuals is under consideration by the Subcommittee on Standards of Training and Watchkeeping of the International Maritime Organization. Action on this proposal is being deferred until this concept is further developed.

32. Manning scales: The proposed manning scales published in the SNPRM were reviewed and determined not to be consistent with standard manning practices. The revisions necessary to ensure consistency have been made, and the following manning scales will become part of the U.S. Coast Guard's published policy in the Marine Safety Manual.

MODU Manning Scales

A. Drillships underway—voyage of more than 72 hours

- 1—Master
- 1—Chief Mate
- 1—Second Mate

- 1—Third Mate
- 6—Able Seamen (1)
- 3—Ordinary Seamen (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer
- 3—Assistant Engineers (2)*
- 3—Oilers*

B. Drillships underway—voyage of more than 16 but not more than 72 hours

- 1—Master
- 2—Mates
- 4—Able Seamen
- 2—Ordinary Seamen (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer
- 2—Assistant Engineers (2)*
- 3—Oilers*

C. Drillships underway—voyage of not more than 16 hours

- 1—Master
- 1—Mate
- 4—Able Seamen
- 2—Ordinary Seamen (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer
- 1—Assistant Engineer (2)*
- 2—Oilers*

When engaged on a voyage of not more than 8 hours, the required crew may be reduced by 2 Able Seamen, 1 Ordinary Seaman, and 1 Oiler.

D. Drillships on location

- 1—Master (With OIM endorsement)
- 1—Mate
- 2—Able Seamen
- 1—Ordinary Seaman (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer
- 1—Assistant Engineer (2)*
- 2—Oilers*

E. Self-propelled surface units (other than drillships) underway—voyage of more than 72 hours

- 1—Master (With OIM endorsement)
- 1—Chief Mate (With BS or BCO endorsement)
- 2—Mates (With BCO endorsements)
- 6—Able Seamen (1)
- 3—Ordinary Seamen (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer (2)
- 3—Assistant Engineers (2)*
- 3—Oilers*

F. Self-propelled surface units (other than drillships) underway—voyage of more than 16 but not more than 72 hours

- 1—Master (With OIM endorsement)
- 2—Mates (With BCO endorsements)
- 4—Able Seamen
- 2—Ordinary Seamen (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer (2)
- 2—Assistant Engineers (2)*
- 2—Oilers*

G. Self-propelled surface units (other than drillships) underway—voyage of not more than 16 hours

- 1—Master (With OIM endorsement)
- 2—Mates (With BCO endorsements)
- 4—Able Seamen
- 2—Ordinary Seamen (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer (2)
- 1—Assistant Engineer (2)*
- 2—Oilers*

When engaged on a voyage of not more than 8 hours, the required crew may be reduced by 2 Able Seamen, 1 Ordinary Seaman, and 1 Oiler.

H. Self-propelled surface units (other than drillships) on location or under tow

- 1—Master (With OIM endorsement)
- 1—Mate (With BCO endorsement)
- 1—Ballast Control Operator
- 2—Able Seamen
- 1—Ordinary Seaman (3)
- 1—Radio Officer (If required by the FCC)
- 1—Chief Engineer (2)
- 1—Assistant Engineer (2)*
- 2—Oilers*

I. Non-self-propelled surface units (excluding bottom bearing units) on location or under tow

- 1—Offshore Installation Manager
- 1—Barge Supervisor
- 2—Ballast Control Operators
- 2—Able Seamen
- 1—Ordinary Seaman (3)

J. Non-self-propelled bottom bearing units on location or under tow

- 1—Offshore Installation Manager
- 2—Able Seamen
- 1—Ordinary Seaman

33. OIM MODU service requirements. One comment to the SNPRM stated that the OIM qualification requirement that service be obtained on the particular type of MODU for which the individual is being licensed is excessive to the needs of safety. The commenter stated that no additional experience is required when shifting from surface to bottom bearing units. The loading, stability, and drilling operations are much simpler on bottom bearing units. Familiarity with the jacking and preload systems would be acquired during the rig moves required to obtain an underway endorsement. The Coast Guard agrees and has removed the requirement that

individuals qualifying for the OIM license through service on MODUs have service on bottom bearing units. However, licensed masters and chief mates qualifying for an OIM Bottom Bearing Unit on Location endorsement will still be required to present evidence of 28 days of service on bottom bearing units.

The commenter stated that the MODU type specific service requirement for surface units was excessive. The commenter believed that since the drilling, stability, and mooring systems of a surface unit are normally more complex than that of a bottom bearing unit, it is appropriate that some surface unit service be required. However, these systems will be addressed in the required blowout prevention and well control training, and the required stability course. In addition, semi-submersible units will have on board a barge supervisor skilled in stability matters. The Coast Guard agrees and has reduced the period of surface unit time required for an OIM license endorsed for surface units service.

34. Barge supervisor trainee. One commenter urged that provision be made in the regulations for individuals to obtain a barge supervisor license through a trainee program. Various terms barge captain trainee, barge supervisor trainee, barge engineer trainee, etc., these trainees participate in a program to learn the marine aspects of a semi-submersible MODU, including operation of the ballast system. The Coast Guard agrees with the proposal and has made allowance for individuals to use barge supervisor trainee service when qualifying for a license as barge supervisor.

Regulatory Evaluation

The Coast Guard considers these regulations to be non-major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034; 26 February 1979). A full draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council (G-LRA-2/36) [CGD 81-059a], room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, from 8 a.m. to 3 p.m.

The costs associated with the rulemaking primarily concern training of personnel. For this analysis, required training costs are expressed in 1988 dollars. The analysis has not been updated for 1989, since the inflation increase of costs and benefits will have been by the same percentage. The regulations are not expected to have a

* Variables based on degree and acceptance of automated systems. (1) Up to two specially trained ordinary seamen may be substituted for a maximum of two of the required able seamen provided section 23.A.2 of Volume III of the Marine Safety Manual, and Navigation and Vessel Inspection Circular 3-83 are satisfied.

(2) Individuals holding MODU engineer licenses may be substituted for the required licensed engineers at the discretion of the OCMI.

(3) The OCMI may consider the elimination of ordinary seamen on self-propelled units if the vessel meets the labor saving device criteria in section 23.A.2. Volume III of the Marine Safety Manual, and, taking into consideration the specialized nature of the unit, the OCMI finds it safe to do so.

significant economic impact. The proposed rulemaking would not require any major expenditures by the maritime industry, consumers, Federal, state or local governments. The proposal would require individuals serving in certain responsible positions on MODUs of either the self-propelled or non-self-propelled type to obtain a Coast Guard issued license or endorsement that authorizes them to serve in the positions held. Implementation would not increase manning requirements on MODUs but rather would set a standard for training and experience for certain responsible positions. Persons holding these positions on MODUs will have to meet licensing qualifications including a particular level of experience on MODUs, completion of training courses, physical standards and professional examination. Most drilling companies already require high standards of experience and training for the people serving on their units.

The cost of the training that would be required by the proposal is summarized below. The total cost of \$4,252,056 may be considered to be a one-time start-up cost with minimal additional costs in the ensuing years. Of course, anyone entering the mobile offshore drilling industry thereafter would be required to meet the same requirements; however, the mobile offshore drilling industry has been on a hiring plateau or decline for the past few years, and there appear to be no problems in drawing from the current pool of qualified personnel.

The following factors will significantly reduce the total cost shown in the evaluation. It is, however, impractical to quantify the exact cost savings without polling every licensee and potential license holder in the industry:

(1) Through conversations with industry representatives, it was determined the proposed amounts of experience are reasonably equivalent to the level required of persons presently serving in positions of responsibility;

(2) Many assigned personnel also hold previously issued Coast Guard licenses as Master MODU (486 licenses issued), Mate MODU (81 licenses), Chief Engineer MODU (291 licenses) and Assistant Engineer MODU (28 licenses). By virtue of holding these licenses, they have met current Coast Guard qualification standards including experience, physical standards and professional examination. They may or may not meet the specialized sea service or training course requirements in this proposed rule. These rules require that present license holders meet the training course requirements in order to convert their licenses to a license under the new system; and,

(3) Many established drilling companies have designed and developed their own in-house training courses and facilities; therefore, these companies already train their personnel in courses similar to those required by the proposed rulemaking. While some costs must still be absorbed, such as loss of productive work, salary, travel and per diem, the actual cost of the training will be much less when provided by the parent company.

(4) The U.S. Minerals Management Service (MMS) already requires attendance at a training course for blowout prevention and well control training for persons in certain positions on MODUs. The Coast Guard will accept evidence of completion of the required MMS course as satisfying this training requirement.

The costs associated with licensing and qualification of the personnel in positions of responsibility on MODUs are relatively insignificant when compared to typical MODU construction costs and operating fees. Current estimates of construction range from \$65-\$70 million for a jack-up rig, \$100-\$120 million for a semi-submersible, and \$55-\$125 million for a drillship. Operating fees range widely from \$15,000-\$20,000 per day for jack-ups, \$30,000-\$40,000 per day for semi-submersibles, to \$30,000-\$40,000 per day for drillships. The training and qualifications contained in the proposal, which are strongly recommended by the National Transportation Safety Board, generally supported by the mobile offshore drilling industry, and under serious consideration internationally, will certainly be justified if they contribute to the prevention of the loss of even one MODU and its crew, or even minimize the down-time of an operating unit.

Summary of Costs

Training course costs and duration used in the computations are:

a. MODU stability—Cost estimates range from \$700/student-\$1,650/student; and the duration of the course is 5 days. Average is \$1,175 and 5 days.

b. Blowout prevention or well-control training—Cost estimates ranged from \$600/student to \$750/student; and the duration of the course ranges from 3 to 5 days. Average is \$675 and 4 days.

c. Survival suit and survival craft training—Cost estimates ranged from \$225/student to \$400/student; and the duration of the course ranges from 1 day to 3 days. Average is \$313 and 2 days.

d. Basic and advanced firefighting training—Cost estimates are the same as noted in the preamble to the Interim Final Rule (52 FR 38660) published 16

October 1987: cost estimates range from \$100/student to \$400/student; and the duration of the course is 5 days. Average is \$150 and 5 days.

e. First aid and cardiopulmonary resuscitation (CPR) training—Cost estimate is \$55/student; and the duration of the course ranges from 1 day to 2 days. Average is \$55 and 2 days.

Training in first aid and CPR is a basic qualification requirement for all licenses and would be met by all who possess master, mate, or MODU licenses previously issued. Many companies already require first aid/CPR training for personnel. Firefighting training is already required of masters and mates. These considerations reduce the economic impact of the proposal.

Coast Guard statistics dated 1 August 1988 indicate a total of 223 active U.S. flag MODUs composed of:

Drillships	2
Self-propelled semi-submersible	1
Non-self-propelled semi-submersibles	42
Submersibles	7
Jack-ups	171

Therefore, the field of MODUs affected by this proposal is 3 self-propelled and 220 non-self-propelled units. The self-propelled units are manned by conventionally licensed personnel who already must obtain the specific types of training indicated above.

Cost estimates for required training for all licensed personnel on MODUs is determined in the following manner (standard industry practice with six months on and six months off schedule for each position—two individuals per officer position):

(a) *Drillships*: The proposed regulations only affect the training requirements for one officer and then only when the vessel is on location. When on location the master must hold a valid endorsement as OIM. Training costs associated with this class of vessel are: 2 (drillships) × 1 (licensed officer) × 2 (individuals per billet) × \$2,163 (stability, drilling safety, and survival training) = \$8,652.

(b) *Self-propelled semi-submersibles*: The proposed regulations require on average that three individuals serving on board hold MODU endorsements on their licenses. Training costs associated with this class of vessel are: 1 (vessel) × 3 (licensed officers) × 2 (individuals per billet) × \$2,163 (stability, drilling safety, and survival training) = \$12,978.

(c) *Non-self-propelled semi-submersibles*: The proposed regulations require that there be four MODU

licensed individuals serving on board. Training costs associated with this class of vessel are: 42 (vessels) \times 4 (licensed officers) \times 2 (individuals per billet) \times \$2,368 (stability, drilling safety, survival training, firefighting, and first aid/CPR) = \$795,648.

(d) *Non-self-propelled bottom bearing:* The proposed regulations require that there be one MODU licensed individual serving on board. Training costs associated with this class of vessel are: 178 (vessels) \times 1 (licensed officer) \times 2 (individuals per billet) \times \$2,368 (stability, drilling safety, survival training, firefighting, and first aid/CPR) = \$843,008.

Combining the four MODU categories, the total cost for the training courses is: \$8,652 + \$12,976 + \$795,648 + \$843,008 = \$1,660,283.

Estimated travel and per diem expenses should be considered, both to obtain the training and for the required visit to a regional examination center (REC). The total combined length of the training courses required by this proposal is approximately 11-13 days. It is estimated that a 1-3 days visit to an REC will be required to examine for the desired license. Application and processing may be done through the mail. A two-day visit to the REC was used in the calculations. A day of travel and per diem is also included for each training course and the visit to an REC. Calculating the per diem and travel costs for each person is quite difficult. Many courses are offered by the company employer on the drilling site rather than moving the trainee to a school. An average per diem rate is approximately \$85 per day. Travel is estimated to average \$250 per person for each course or visit to an REC. The likely maximum per diem and travel costs are estimated as follows:

(a) *Drillships:* 4 (individuals) \times [(3 courses + 1 REC visit) \times \$250 (travel) + (17 (days) \times \$85 (per diem))] = \$9,790.

(b) *Self-propelled semi-submersibles:* 6 (individuals) \times [(4 \times \$250) + (17 + \$85)] = \$14,870.

(c) *Non-self-propelled semi-submersibles:* 336 (individuals) \times [(6 \times \$250) + (26 + \$85)] = \$1,246,560.

(d) *Non-self-propelled bottom bearing:* 358 (individuals) \times [(6 \times \$250) + (26 + \$85)] = \$1,320,760.

Total travel and per diem costs = \$2,591,770.

Combined training, travel, and per diem costs = \$4,252,056.

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small

entities. These proposed rules apply to licenses for individuals only. The effect on training schools would be to formalize the requirements to attend such industry-specific training; presently, such training is often optional for the individuals serving on the MODU at the discretion of the owner/operator.

This proposed rulemaking contains information collection requirements in §§ 10.470, 10.472, 10.474, 10.542, and 10.544. With the exception of the requirement to submit course completion certificates for the blowout prevention and well control, survival suit and survival craft, and stability training courses, the proposed rule contains no new information collection requirements. The information collection requirements were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved. The approval numbers are listed in title 46 Code of Federal Regulations, § 10.107. The collection requirements will only affect applicants for licenses in that they must make application for a license and provide certificates as evidence of required training. The certificate will be supplied by the training facilities which provide the course(s). The time required to comply with this requirement is inconsequential.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rules do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

In consideration of the foregoing the Coast Guard amends parts 10 and 15 to

title 45, Code of Federal Regulations as set forth below:

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7701, 8105; 49 CFR 1.45, 1.46. Section 10.107 also issued under the authority of 44 U.S.C. 3507.

2. The table of contents for part 10 is amended by revising the section heading for 10.470 and 10.540 and adding new sections 10.472, 10.474, 10.476, 10.542, and 10.544 to read as follows:

Sec.

Subpart D—Professional Requirements for Deck Officers' Licenses

- 10.470 License for offshore installation manager.
- 10.472 License for barge supervisor.
- 10.474 License for ballast control operator.
- 10.476 Acknowledgments of service and temporary licenses for mobile offshore drilling units.

Subpart E—Professional Requirements for Engineer Officers' Licenses

- 10.540 License for engineers of mobile offshore drilling units.
- 10.542 License for chief engineer (MODU).
- 10.544 License for assistant engineer (MODU).

3. In § 10.103, the following definitions are added in alphabetical order to read as follows:

§ 10.103 Definitions of terms used in this part.

Ballast control operator (BCO) is a licensed officer restricted to service on MODUs. The duties involve the operation of the complex ballast system found on many MODUs. A ballast control operator, when assigned to a MODU, is the equivalent of a conventionally licensed mate.

Barge supervisor (BS) is a licensed officer restricted to service on MODUs. The duties involve support to the OIM in marine related matters including, but not limited to, maintaining watertight integrity, inspecting and maintaining mooring and towing components, and the maintenance of emergency and other marine related equipment. A barge supervisor, when assigned to a MODU is

the equivalent of a conventionally licensed mate.

Employment assigned to is the total period a person is assigned to work on MODUs, including time spent ashore as part of normal crew rotation.

Mobile offshore drilling unit (MODU) means a vessel capable of engaging in drilling operations for the exploration for or exploitation of subsea resources. MODU designs include:

(a) *Bottom bearing units* which include:

(1) *Self-elevating (or jack-up) units* with moveable, bottom bearing legs capable of raising the hull above the surface of the sea; and,

(2) *Submersible units* of ship shape, barge type or novel hull design, other than a self-elevating unit, intended for operating while bottom bearing.

(b) *Surface units* with a ship shape or barge type displacement hull of single or multiple hull construction intended for operating in a floating condition, including semi-submersibles and drillships.

Offshore installation manager (OIM) is a licensed officer restricted to service on MODUs. An assigned offshore installation manager is equivalent to a conventionally licensed master and is the person designated by the owner or operator to be in complete and ultimate command of the unit.

On location means that a mobile offshore drilling unit is bottom bearing or moored with anchors placed in the drilling configuration.

Senior company official means the president, vice president, vice president for personnel, personnel director, or similarly titled or responsible individual, or a lower level employee designated in writing by one of the aforementioned for the purpose of certifying employment and whose signature is on file at the REC at which application is made.

Service as when computing the required service for MODU licenses, is the time period, in days, a person is assigned to work on MODUs, excluding time spent ashore as part of crew rotation. A day, for the purposes of this definition, is a minimum of four hours, and no additional credit is received for periods served over eight hours.

Underway means that a mobile offshore drilling unit is not in an on location or laid up status. Underway includes that period of time when the MODU is deploying or recovering its mooring system.

4. Section 10.107(b)(1) is revised to read as follows:

§ 10.107 Paperwork approval.

(b) * * *

(1) OMB 2115-0514—46 CFR 10.201, 10.202, 10.205, 10.207, 10.209, 10.470, 10.472, 10.474, 10.542, and 10.544.

5. Section 10.201(f)(1) is revised to read as follows:

§ 10.201 Eligibility for licenses, general.

(f) * * *

(1) A license as master of near coastal, Great Lakes and inland, inland, or river vessels of 25-200 gross tons, third mate, third assistant engineer, mate of vessels of 200-1600 gross tons, ballast control operator, assistant engineer (MODU), assistant engineer of fishing industry vessels, second-class operator of uninspected towing vessel, radio officer, assistant engineer (limited-oceans), or designated duty engineer of vessels of not more than 4000 horsepower may be granted to an applicant who has reached the age of 19 years.

6. Section 10.205(f)(1) is revised to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

(f) * * *

(1) Each applicant for an original license shall submit written recommendations concerning the applicant's suitability for duty from a master and two other licensed officers of vessels on which the applicant has served. For a license as engineer or as pilot, at least one of the recommendations must be from the chief engineer or licensed pilot, respectively, of a vessel on which the applicant has served. For a license as engineer where service was obtained on vessels not carrying a licensed engineer and for a license as operator of uninspected towing vessels, the recommendations may be by recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served. For a license as offshore installation manager, barge supervisor, or ballast control operator, at least one recommendation must be from an offshore installation manager of a unit on which the applicant has served. Where an applicant qualifies for a license through an approved training school, one of the character references must be an official of that school. For a

license for which no commercial experience may be required, such as: Master or mate 25-200 gross tons, operator of uninspected passenger vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

7. Section 10.468 is added to read as follows:

§ 10.468 Licenses for mobile offshore drilling units.

Licenses for service on mobile offshore drilling units (MODUs) authorize service on units of any gross tons upon ocean waters while on location or while underway, as restricted on the license, except when moving independently under their own power.

8. Section 10.470 is added to read as follows:

§ 10.470 Licenses for offshore installation manager.

(a) Licenses as offshore installation manager (OIM) are endorsed as:

- (1) OIM Unrestricted;
- (2) OIM Surface Units on Location;
- (3) OIM Surface Units Underway;
- (4) OIM Bottom Bearing Units on Location; or
- (5) OIM Bottom Bearing Units Underway.

(b) To qualify for a license or endorsement as OIM Unrestricted, an applicant must:

(1) Present evidence of the following experience:

(i) Four years of employment assigned to MODUs including at least one year of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position on MODUs, with a minimum of 14 days of that supervisory service on surface units; or

(ii) A degree from a program in engineering or engineering technology which is accredited by the Accreditation Board for Engineering and Technology (ABET). Commandant (G-MVP) will give consideration to accepting education credentials from programs having other than ABET accreditation. An applicant qualifying through a degree program must also have at least 168 days of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator, or equivalent supervisory position on MODUs, with a

minimum of 14 days of that supervisory service on surface units;

(2) Present evidence of training course completion as follows:

(i) A certificate from a Coast Guard approved stability course approved for an OIM Unrestricted license or endorsement;

(ii) A certificate from a Coast Guard approved survival suit and survival craft training course. Prior to July 1, 1995, the requirement may be waived at the license applicant's request. However, the license will be issued with an endorsement on the reverse side which states, "A Coast Guard approved survival suit and survival craft training course must be completed prior to license renewal.";

(iii) A certificate from a U.S. Minerals Management Service approved blowout prevention and well control training program for the driller, toolpusher, or operator representative position;

(iv) A certificate from a firefighting training course as required by § 10.205(g) of this part; and

(3) Provide a recommendation signed by a senior company official which:

(i) Provides a description of the applicant's experience and qualifications;

(ii) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, two rig moves each of surface units and of bottom bearing units; and

(iii) Certifies that one of the rig moves required under paragraph (b)(3)(ii) of this section was completed within one year preceding date of application.

(c) An applicant for an endorsement as OIM Unrestricted who holds an unlimited license as master or chief mate must satisfy the requirements in paragraphs (b)(2) and (b)(3) of this section and have at least 84 days of service on surface units and at least 28 days of service on bottom bearing units.

(d) To qualify for a license or endorsement as OIM Surface Units on Location, and applicant must:

(1) Present evidence of the following experience:

(i) Four years of employment assigned to MODUs including at least one year of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position on MODUs, with a minimum of 14 days of that supervisory service on surface units; or

(ii) A degree from a program in engineering or engineering technology which is accredited by the Accreditation Board for Engineering and Technology (ABET). Commandant (G-MVP) will

give consideration to accepting education credentials from programs having other than ABET accreditation.

An applicant qualifying through a degree program must also have at least 168 days of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position of MODUs, with a minimum of 14 days of that supervisory service on surface units; and

(2) Present evidence of training course completion as follows:

(i) A certificate from a Coast Guard approved stability course approved for an OIM Surface Units license or endorsement;

(ii) A certificate from a Coast Guard approved survival suit and survival craft training course. Prior to July 1, 1995, the requirement may be waived at the license applicant's request. However, the license will be issued with an endorsement on the reverse side which states, "A Coast Guard approved survival suit and survival craft training course must be completed prior to license renewal.";

(iii) A certificate from a U.S. Minerals Management Service approved blowout prevention and well control training program for the driller, toolpusher, or operator representative position; and

(iv) A certificate from a firefighting training course as required by § 10.205(g) of this part.

(e) An applicant for an endorsement as OIM Surface Units on Location who holds an unlimited license as master or chief mate must satisfy the requirements of paragraph (d)(2) of this section and have at least 84 days of service on surface units.

(f) To qualify for a license as OIM Surface Units Underway, an applicant must:

(1) Provide the following:

(i) Evidence of the experience described in paragraph (d)(1) of this section and a recommendation signed by a senior company official which:

(A) Provides a description of the applicant's experience and qualifications;

(B) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, three rig moves of surface units; and

(C) Certifies that one of the rig moves required under paragraph (f)(1)(i)(B) of this section was completed within one year preceding date of application; or

(ii) A recommendation signed by a senior company official which:

(A) Provides a description of the applicant's experience and company qualifications program completed;

(B) Certifies that the applicant has witnessed ten rig moves either as an observer in training or as a rig mover under supervision;

(C) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, five rig moves of surface units; and

(D) Certifies that one of the rig moves required under paragraph (f)(1)(ii)(C) of this section was completed within one year preceding date of application; and

(2) Present evidence of training course completion as follows:

(i) A certificate from a Coast Guard approved stability course approved for an OIM Surface Units license or endorsement;

(ii) A certificate from a Coast Guard approved survival suit and survival craft training course. Prior to July 1, 1995, the requirement may be waived at the license applicant's request. However, the license will be issued with an endorsement on the reverse side which states, "A Coast Guard approved survival suit and survival craft training course must be completed prior to license renewal."; and

(iii) A certificate from a firefighting training course as required by § 10.205(g) of this part

(g) An applicant for endorsement as OIM Surface Units Underway who holds an unlimited license as master or chief mate must satisfy the requirements in paragraph (f)(2) of this section and provide a company recommendation signed by a senior company official which:

(1) Provides a description of the applicant's experience and qualifications;

(2) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, three rig moves on surface units; and

(3) Certifies that one of the rig moves required under paragraph (g)(2) of this section was completed within one year preceding date of application.

(h) To qualify for a license or endorsement as OIM Bottom Bearing Units on Location, an applicant must:

(1) Present evidence of the following experience:

(i) Four years of employment assigned to MODUs including at least one year of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position on MODUs; or

(ii) A degree from a program in engineering or engineering technology which is accredited by the Accreditation Board for Engineering and Technology

(ABET). Commandant (G-MVP) will give consideration to accepting education credentials from programs having other than ABET accreditation. An applicant qualifying through a degree program must also have at least 168 days of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position on MODUs; and

(2) Present evidence of training course completion as follows:

(i) A certificate from a Coast Guard approved survival suit and survival craft training course. Prior to July 1, 1995, the requirement may be waived at the license applicant's request. However, the license will be issued with an endorsement on the reverse side which states, "A Coast Guard approved survival suit and survival craft training course must be completed prior to license renewal."; and

(ii) A certificate from a U.S. Minerals Management Service approved blowout prevention and well control training program for the driller, toolpusher, or operator representative position; and

(iii) A certificate from a firefighting training course as required by § 10.205(g) of this part.

(i) An applicant for an endorsement as OIM Bottom Bearing Units on Location who holds an unlimited license as master or chief mate must satisfy paragraph (h)(2) of this section and have at least 28 days of service on bottom bearing units.

(j) To qualify for a license or endorsement as OIM Bottom Bearing Units Underway, an applicant must:

(1) Provide the following:

(i) Evidence of the experience described in paragraph (h)(1) of this section with a recommendation signed by a senior company official which:

(A) Provides a description of the applicant's experience and qualifications;

(B) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, three rig moves of bottom bearing units; and

(C) Certifies that one of the rig moves required under paragraph (j)(1)(i)(B) of this section was completed within one year preceding date of application; or

(ii) A recommendation signed by a senior company official which:

(A) Provides a description of the applicant's experience and company qualifications program completed;

(B) Certifies that the applicant has witnessed ten rig moves either as an observer in training or as a rig mover under supervision;

(C) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, five rig moves of bottom bearing units; and

(D) Certifies that one of the rig moves required under paragraph (j)(1)(i)(C) of this section was completed within one year preceding date of application; and

(2) Present evidence of training course completion as follows:

(i) A certificate from a Coast Guard approved stability course approved for OIM Bottom Bearing Units license or endorsement;

(ii) A certificate from a Coast Guard approved survival suit and survival craft training course. Prior to July 1, 1995, the requirement may be waived at the license applicant's request. However, the license will be issued with an endorsement on the reverse side which states, "A Coast Guard approved survival suit and survival craft training course must be completed prior to license renewal."; and

(iii) A certificate from a firefighting training course as required by § 10.205(g) of this part;

(k) An applicant for endorsement as OIM Bottom Bearing Units Underway who holds an unlimited license as master or chief mate must satisfy the requirements in paragraph (j)(2) of this section and provide a company recommendation signed by a senior company official which:

(1) Provides a description of the applicant's experience and qualifications;

(2) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, three rig moves of bottom bearing units; and

(3) Certifies that one of the rig moves required under paragraph (k)(2) of this section was completed within one year preceding date of application.

9. Section 10.472 is added to read as follows:

§ 10.472 License for barge supervisor.

(a) To qualify for a license or endorsement as barge supervisor (BS), an applicant must:

(1) Present evidence of the following experience:

(i) Three years of employment assigned to MODUs including at least 168 days of service as driller, assistant driller, toolpusher, assistant tool pusher, mechanic, electrician, crane operator, subsea specialist, ballast control operator or equivalent supervisory position on MODUs. At least 84 days of that service shall have been as a ballast control operator or barge supervisor trainee; or

(ii) A degree from a program in engineering or engineering technology which is accredited by the Accreditation Board for Engineering and Technology (ABET). Commandant (G-MVP) will give consideration to accepting education credentials from programs having other than ABET accreditation. An applicant qualifying through a degree program must also have at least 168 days of service as driller, assistant driller, toolpusher, assistant toolpusher, mechanic, electrician, crane operator, subsea specialist, ballast control operator or equivalent supervisory position on MODUs. At least 84 days of that service shall have been as a ballast control operator or barge supervisor trainee; and

(2) Present evidence of training course completion as follows:

(i) A certificate from a Coast Guard approved stability course approved for a barge supervisor license or endorsement;

(ii) A certificate from a Coast Guard approved survival suit and survival craft training course. Prior to July 1, 1995, the requirement may be waived at the license applicant's request. However, the license will be issued with an endorsement on the reverse side which states, "A Coast Guard approved survival suit and survival craft training course must be completed prior to license renewal."; and

(iii) A certificate from a firefighting training course as required by § 10.205(g) of this part.

(b) An applicant for an endorsement as BS who holds an unlimited license as master or mate must satisfy the requirements in paragraph (a)(2) of this section and have at least 84 days of service as ballast control operator or barge supervisor trainee.

10. Section 10.474 is added to read as follows:

§ 10.474 License for ballast control operator.

(a) To qualify for a license or endorsement as ballast control operator (BCO), an applicant must:

(1) Present evidence of the following experience:

(i) One year of employment assigned to MODUs including at least 28 days of service as a trainee under the supervision of a licensed ballast control operator; or

(ii) A degree from a program in engineering or engineering technology which is accredited by the Accreditation Board for Engineering and Technology (ABET). Commandant (G-MVP) will give consideration to accepting education credentials from programs

having other than ABET accreditation. An applicant qualifying through a degree program must also have at least 28 days of service as a trainee under the supervision of a licensed ballast control operator; and

(2) Present evidence of training course completion as follows:

(i) A certificate from a Coast Guard approved stability course approved for a barge supervisor or ballast control operator license or endorsement;

(ii) A certificate from a Coast Guard approved survival suit and survival craft training course. Prior to July 1, 1995, the requirement may be waived at the license applicant's request. However, the license will be issued with an endorsement on the reverse side which states, "A Coast Guard approved survival suit and survival craft training course must be completed prior to license renewal."; and

(iii) A certificate from a firefighting training course as required by § 10.205(g) of this part.

(b) An applicant for an endorsement as BCO who holds an unlimited license as master, mate, chief engineer, or assistant engineer must satisfy the requirements in paragraph (a)(2) of this section and have at least 28 days of service as a trainee under the supervision of a licensed ballast control operator.

11. Section 10.476 is added to read as follows:

§ 10.476 Acknowledgments of service and temporary licenses for mobile offshore drilling units.

(a) Prior to January 1, 1991, unlicensed individuals who served in positions on MODUs equivalent to OIM, BS, or BCO may make application for a Coast Guard acknowledgment of service or a temporary license, both of which authorize a continuation of service in that position. To be eligible, these individuals must have served in that position between July 1, 1987 and June 30, 1990, and meet the following requirements:

(1) Coast Guard acknowledgment of service.

(i) To obtain a Coast Guard acknowledgment of service, the applicant must provide a letter from a senior company official of the company worked for. This letter must provide:

(A) Name of vessel(s) served on;
(B) MODU license which the individual's position is equivalent to; and

(C) Period of service.

(ii) The Coast Guard acknowledgment of service is valid for one year and is not renewable.

(2) Temporary license.

(i) To obtain a temporary license, the applicant must:

(A) Provide a letter from a senior company official of the company worked for. This letter must provide:

(1) Name of vessel(s) served on;
(2) MODU license which the individual's position is equivalent to; and

(3) Period of service; and

(B) Provide evidence of 120 days of service in a position equivalent to the license endorsement sought.

(ii) a temporary license is valid for five years and is not renewable.

(b) Acknowledgments or temporary licenses obtained using the provisions of this section will restrict service authority to vessels operated by the company which has certified service.

11. Section 10.540 is added to read as follows:

§ 10.540 Licenses for engineers of mobile offshore drilling units.

Licenses as chief engineer (MODU) or assistant engineer (MODU) authorize service on certain self-propelled or non-self-propelled units of any horsepower where authorized by the vessel's certificate of inspection.

12. Section 10.542 is added to read as follows:

§ 10.542 License for chief engineer (MODU).

To qualify for a license as chief engineer (MODU) an applicant must:

(a) Present evidence of the following experience:

(1) Six years of employment assigned to MODUs including three years of employment as mechanic, motorman, subsea engineer, electrician, barge engineer, toolpusher, unit superintendent, crane operator or equivalent. Eighteen months of that employment must have been assigned to self-propelled or propulsion assisted units; or

(2) Two years of employment assigned to MODUs as an assistant engineer (MODU). Twelve months of that employment must have been assigned to self-propelled or propulsion assisted units; and

(b) Present evidence of completion of a firefighting training course as required by § 10.205(g) of this part.

14. Section 10.544 is added to read as follows:

§ 10.544 License for assistant engineer (MODU).

To qualify for a license as assistant engineer (MODU) an applicant must:

(a) Present evidence of the following experience:

(1) Three years of employment assigned to MODUs including 18 months of employment as mechanic, motorman, subsea engineer, electrician, barge engineer, toolpusher, unit superintendent, crane operator or equivalent. Nine months of that employment must have been assigned to self-propelled or propulsion assisted units;

(2) Three years of employment in the machinist trade engaged in the construction or repair of diesel engines and one year of employment assigned to MODUs in the capacity of mechanic, motorman, oiler, or equivalent. Nine months of that employment must have been assigned to self-propelled or propulsion assisted units; or

(3) A degree from a program in marine, mechanical, or electrical engineering technology which is accredited by the Accreditation Board for Engineering and Technology (ABET). Commandant (G-MVP) will give consideration to accepting education credentials from programs having other than ABET accreditation. An applicant qualifying through a degree program must also have at least six months of employment in any of the capacities listed in paragraph (a)(1) of this section aboard self-propelled or propulsion assisted units; and

(b) Present evidence of completion of a firefighting training course as required by § 10.205(g) of this part.

15. Section 10.920 is added to read as follows:

§ 10.920 Subjects for MODU licenses.

Table 10.920-1 gives the codes used in Table 10.920-2 for MODU licenses. Table 10.920-2 indicates the examination subjects for each license by the code number.

Table 10.920-1 Codes for MODU Licenses

1. OIM/Unrestricted
2. OIM/Surface Units Underway
3. OIM/Surface Units on Location
4. OIM/Bottom Bearing Units Underway
5. OIM/Bottom Bearing Units on Location
6. Barge Supervisor
7. Ballast Control Operator

TABLE 10.920-2.—Subjects for MODU Licenses

Examination topics	1	2	3	4	5	6	7
Watchkeeping							
COLREGS	X	X		X		X	

TABLE 10.920-2.—Subjects for MODU Licenses—Continued

Examination topics	1	2	3	4	5	6	7
"Basic Principles for Navigational Watch".....	X	X	X	X	X	X	
MODU obstruction lights.....	X		X		X	X	
Meteorology and oceanography: Synoptic chart weather forecasting.....	X	X	X	X	X	X	
Characteristics of weather systems.....	X	X	X	X	X	X	X
Ocean current systems.....	X	X	X	X	X	X	
Tide and tidal current publications.....	X	X	X	X	X	X	
Stability, ballasting, construction and damage control: Principles of ship construction, structural members.....	X	X	X	X	X	X	X
Trim and stability.....	X	X	X	X	X	X	X
Damaged trim and stability counter-measures.....	X	X	X	X		X	X
Stability and trim calculations.....	X	X	X	X		X	X
Load line requirements.....	X	X	X	X	X	X	X
Operating manual: Rig characteristics and limitations.....	X	X	X	X	X	X	X
Hydrostatics data.....	X	X	X	X		X	X
Tank tables.....	X	X	X	X	X	X	X
KG limitations.....	X	X	X	X		X	X
Severe storm instructions.....	X	X	X	X	X	X	X
Transit instructions.....	X	X	X		X	X	

TABLE 10.920-2.—Subjects for MODU Licenses—Continued

Examination topics	1	2	3	4	5	6	7
On-station instructions.....	X		X		X	X	X
Unexpected list or trim.....	X	X	X	X		X	X
Ballasting procedures.....	X	X	X			X	X
Operation of bilge system.....	X	X	X	X		X	X
Leg loading calculations.....	X			X	X		
Completion of variable load form.....	X	X	X	X	X	X	X
Evaluation of variable load form.....	X	X	X	X	X	X	X
Emergency procedures.....	X	X	X	X	X	X	X
Maneuvering and handling: Anchoring and anchor handling.....	X	X	X			X	
Heavy weather operations.....	X	X	X	X	X	X	X
Mooring, positioning.....	X	X	X	X		X	X
Moving, positioning.....	X	X		X		X	
Fire prevention and firefighting appliances: Organization of fire drills.....	X	X	X	X	X	X	X
Classes and chemistry of fire.....	X	X	X	X	X	X	X
Firefighting systems.....	X	X	X	X	X	X	X
Firefighting equipment and regulations.....	X	X	X	X	X	X	X
Basic firefighting and prevention of fires.....	X	X	X	X	X	X	X
Emergency procedures and contingency plans: Temporary repairs.....	X	X	X	X		X	

TABLE 10.920-2.—Subjects for MODU Licenses—Continued

Examination topics	1	2	3	4	5	6	7
Fire or explosion.....	X	X	X	X	X	X	X
Abandon unit.....	X	X	X	X	X	X	X
Man overboard.....	X	X	X	X	X	X	X
Heavy weather.....	X	X	X	X	X	X	X
Collision.....	X	X	X	X	X	X	X
Failure of ballast control system.....	X	X	X			X	X
Mooring emergencies.....	X		X			X	X
Blowouts.....	X		X		X	X	X
H ₂ S safety.....	X		X		X	X	X
General Engineering—Power plants and auxiliary systems: Marine engineering terminology.....	X	X	X	X	X	X	X
Engineering equipment, operations and failures.....	X	X	X	X	X	X	X
Offshore drilling operations.....							
Deck seamanship—general: Transfer of personnel.....	X	X	X	X	X	X	
Support boats/helicopters.....	X	X	X	X	X	X	
Cargo stowage and securing.....	X	X	X	X	X	X	
Hazardous materials/dangerous goods precautions.....	X	X	X	X	X	X	
Mooring equipment.....	X	X	X	X	X	X	
Crane use procedures and inspections.....	X	X	X	X	X	X	

TABLE 10.920-2.—Subjects for MODU Licenses—Continued

Examination topics	1	2	3	4	5	6	7
Medical care: Knowledge and use of:							
First aid.....	X	X	X	X	X	X	X
First response medical action.....	X	X	X	X	X	X	X
Maritime law and regulation:							
National maritime law:							
Certification and documentation of vessels.....	X	X	X	X	X		
Ship sanitation.....	X	X	X	X	X		
Regulations for vessel inspection.....	X	X	X	X	X		
Pollution prevention regulations.....	X	X	X	X	X	X	X
Licensing and certification regulations.....	X	X	X	X	X		
Rules and regulations for MODUs.....	X	X	X	X	X	X	
International Maritime law:							
International Maritime Organization.....	X	X	X	X	X		
International Convention on Load Lines.....	X	X	X	X			X
MARPOL 73/78.....	X	X	X	X	X		

TABLE 10.920-2.—Subjects for MODU Licenses—Continued

Examination topics	1	2	3	4	5	6	7
Personnel Management and Training:							
Ship's business including:							
Required logs and record keeping.....	X	X	X	X	X	X	
Casualty reports and records.....	X	X	X	X	X		
Communications:							
Radio communications and FCC permit.....	X	X	X	X	X	X	
Radiotelephone procedures.....	X	X	X	X	X	X	
Lifesaving/Survival:							
Lifesaving appliance operation (launching, boat handling).....	X	X	X	X	X	X	X
Procedures/rules for lifeboats, survival suits, PFDs, liferafts and emergency signals.....	X	X	X	X	X	X	X
Emergency radio transmissions.....	X	X	X	X	X	X	X
Survival at sea.....	X	X	X	X	X	X	X

15. Section 10.950 is amended by adding two columns to Table 10.950 marked to reference the existing subject list, which is republished herein for clarity, to read as follows.

§ 10.950 Subjects for engineer licenses.

TABLE 10.950.—Subjects for Engineer Licenses

	...	MODU ch. eng.	MODU asst. eng.
General subjects:			
Prints and tables.....		P-T	P-T
Pipes, fittings, valves.....		P-T	P
Hydraulics.....		P-T	P-T
Bilge systems.....		P-T	P
Sanitary/sewage systems.....		P	P

TABLE 10.950.—Subjects for Engineer Licenses—Continued

	...	MODU ch. eng.	MODU asst. eng.
Freshwater systems.....		P-T	P-T
Lubricants.....		P-T	P
Lubrication systems.....		P	P
Automation systems.....		P-T	P
Control systems.....		P-T	P-T
Propellers/shafting systems.....			
Machine shop.....		P	P
Distilling systems.....		P	P
Pumps.....		P-T	P
Compressors.....		P-T	P
Administration.....		P-T	P
Governors.....		P-T	P-T
Cooling systems.....		P	P
Bearings.....		P	P
Instruments.....		P	P
Ship construction and repair.....		P-T	P
Theory.....		T	T
Steering systems.....			
Deck machinery.....		P	P
Ventilation systems.....		P	P
Thermodynamics.....			
Watch duties.....		P-T	P-T
Refrigeration and air conditioning:			
Theory.....		T	T
Air conditioning systems.....		P	P
Refrigeration systems.....		P	P
Control systems.....		P	P
Safety.....		P	P
Casualty control.....		P	P
Electricity:			
Theory.....		T	T
General maintenance.....		P-T	P-T
Generators.....		P-T	P-T
Motors.....		P-T	P-T
Motor controllers.....		P-T	P-T
Propulsion systems.....		P	P
Distribution systems.....		P	P
Electronic systems.....		P-T	P-T
Batteries.....		P	P
Communications.....		P	P
Safety.....		P-T	P-T
Casualty control.....		P-T	P-T
Steam generators:			
Steam.....		P-T	
Main boilers.....		P-T	P-T
Auxiliary boilers.....		P-T	P
Feedwater systems.....		P-T	P
Condensate systems.....		P-T	P
Recovery systems.....		P-T	P
Fuel.....		P-T	P-T
Fuel systems.....		P-T	P-T
Boiler water.....		P-T	P
Control systems.....		P-T	
Automation systems.....		P-T	

TABLE 10.950.—Subjects for Engineer Licenses—Continued

	MODU ch. eng.	MODU asst. eng.
Safety.....	P-T	P
Casualty control.....	P-T	P
Steam engines:		
Main turbine.....		
Auxiliary turbine.....		
Reciprocating machines.....		
Governor systems.....		
Control systems.....		
Automation systems.....		
Lubrication systems.....		
Drive systems.....		
Safety.....		
Casualty control.....		
Motor:		
Main engines.....	P-T	P
Auxiliary engines.....	P-T	P
Starting systems.....	P-T	P
Lubrication systems.....	P	P
Fuel.....	P	P
Fuel systems.....	P	P
Combustion systems.....	P	P
Intake systems.....	P	P
Exhaust systems.....	P	P
Cooling systems.....	P	P
Supercharging systems.....		
Drive systems.....	P	P
Control systems.....	P	P-T
Automation systems.....	P-T	P-T
Governors.....	P	P
Turbines.....	P	P
Safety.....	P-T	P-T
Casualty control.....	P-T	P-T
Safety:		
Fire.....	P-T	P-T
Fire prevention.....	P-T	P-T
Fire fighting.....	P-T	P-T
Flooding.....	P-T	P-T
Dewatering.....	P-T	P-T
Stability and trim.....	P-T	P-T
Damage control.....	P-T	P-T
Emergency equipment and lifesaving appliances.....	P-T	P-T
General safety.....	P-T	P-T
First aid.....	P-T	P-T
Dangerous materials.....	P-T	P-T
Pollution.....	P-T	P-T
Inspections and surveys.....	P-T	P-T
U.S. rules and regulations.....	P-T	P-T
International rules and regulations.....	P-T	P-T

Notes: P=Practical Knowledge; T=Theoretical Knowledge.

PART 15—MANNING REQUIREMENTS

17. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45; 1.46.

18. Section 15.301 is amended by adding paragraphs (b)(8), (b)(9), and (b)(10) to read as follows:

§ 15.301 Definitions of terms used in this part.

- (b) * * *
- (8) Offshore installation manager (OIM);
- (9) Barge supervisor (BS);
- (10) Ballast control operator (BCO).

19. Section 15.520 is revised to read as follows:

§ 15.520 Mobile offshore drilling units.

(a) The requirements in this section for mobile offshore drilling units (MODUs) supplement other requirements in this part.

(b) The OCMI determines the minimum number of licensed individuals and crew (including lifeboatmen) required for the safe operation of inspected MODUs. In addition to other factors listed in this part, the specialized nature of the MODU is considered in determining the specific manning levels.

(c) A license as offshore installation manager (OIM), barge supervisor (BS), or ballast control operator (BCO) authorizes service only on MODUs. A license or endorsement as OIM is restricted to the MODU type and mode of operation specified on the license.

(d) A self-propelled MODU other than a drillship must be under the command of an individual who holds a license as master endorsed as OIM.

(e) A drillship must be under the command of an individual who holds a license as master. When a drillship is on location, the individual in command must hold a license as master endorsed as OIM.

(f) A non-self-propelled MODU must be under the command of an individual who holds a license or endorsement as OIM.

(g) An individual serving as mate on a self-propelled surface unit other than a drillship must hold an appropriate license as mate and an endorsement as BS or BCO. An individual holding a license or endorsement as barge supervisor or ballast control operator may be substituted for a required mate

when a self-propelled surface unit other than a drillship is on location or under tow, under certain circumstances as determined by the cognizant OCMI.

(h) An individual holding a license or endorsement as barge supervisor is required on a non-self-propelled surface unit other than a drillship.

(i) An individual holding a license or endorsement as barge supervisor may serve as ballast control operator.

(j) The OCMI issuing the MODU's certificate of inspection may authorize the substitution of chief or assistant engineer (MODU) for chief or assistant engineer, respectively, on self-propelled or propulsion assisted surface units, except drillships. The OCMI may also authorize the substitution of assistant engineer (MODU) for assistant engineer on drillships.

(k) Requirements in this part concerning radar observers do not apply to non-self-propelled MODUs.

(1) A surface mobile offshore drilling unit underway or on location, when afloat and equipped with a ballast control room, must have that ballast control room manned by an individual holding a license or endorsement authorizing service as ballast control operator.

20. Section 15.810 is amended by redesignating existing paragraphs (b)(2) through (b)(4) as (b)(3) through (b)(5), respectively; by revising paragraph (b)(1); and by adding a new paragraph (b)(2) to read as follows:

§ 15.810 Mates.

(b) * * *

(1) Vessels of 1000 gross tons or more (except MODUs)—three licensed mates (except when on a voyage of less than 400 miles from port of departure to port of final destination—two licensed mates).

(2) MODUs of 1000 gross tons or more:

(i) Three licensed mates when on a voyage of more than 72 hours.

(ii) Two licensed mates when on a voyage of more than 16 but not more than 72 hours.

(iii) One licensed mate when on a voyage of not more than 16 hours.

Dated: February 16, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-8722 Filed 4-17-90; 8:45 am]

BILLING CODE 4910-14-M

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.
Subscription price, Five Dollars Per Annum in Advance
Single Copies, Fifteen Cents
Entered as Second-Class Matter, May 2, 1917
Postpaid
Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917
Authorized Second-Class Mail Matter
Postage paid at Chicago, Ill.
Postmaster: Send address changes in this journal to THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago 10, Ill.

Wednesday
April 18, 1990

Part IV

**Department of
Education**

**Office of Special Education and
Rehabilitative Services**

**Proposed Funding Priority—Fiscal Year
1990; Notice**

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Proposed Funding Priority—Fiscal Year 1990

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority.

SUMMARY: The Secretary proposes a funding priority for fiscal year 1990 for the Technology, Educational Media, and Materials for the Handicapped Program. This program is administered by the Office of Special Education Programs. The Secretary proposes this priority to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1990.

DATES: Comments must be received on or before May 18, 1990.

ADDRESSES: Comments should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3095—M/S 2313-2640), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell. Telephone: (202) 732-1099.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with handicaps and the provision of early intervention services to infants and toddlers with handicaps. In creating part C, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application. This proposed priority is for a separate competition from that announced through priorities published in the *Federal Register* on September 14, 1989 for the Technology, Educational Media, and Materials for the Handicapped Program (54 FR 38160).

The Secretary proposes to establish the following priority for the Technology, Educational Media, and Materials for the Handicapped Program, CFDA No. 84.180. In accordance with the Education Department General

Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priority; that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Background

Compensatory technology (CFDA 84.180)

Compensatory technology has the potential to alleviate barriers to mobility, manipulation, communication, or instruction for learners who are handicapped. The high cost of research and development coupled with limited market potential have discouraged developers, particularly those in the private sector, from investing in prototype development for compensatory technology. The Office of Special Education Programs has funded a variety of projects in an effort to reduce the investment risk and thereby provide an incentive to developers who wish to introduce innovative technologies into the field.

Priority

This priority supports the development of innovative hardware or software technology that would improve access to education of learners with disabilities. In addition to the development of compensatory technology prototypes, this priority requires grantees to identify design principles, issues, and features that might be applicable to a variety of uses, settings, or target populations. Thus, even if the testing of a prototype were to yield mixed results, the project could yield information useful to other researchers and developers.

Projects funded under this priority must determine what functions need to be performed before learning can begin, as well as functions inherent in the tasks of learning. Projects must also determine students' functional limitations that could be addressed by technology. The determination of educational tasks and of learners' limitations could include behavioral, cognitive affective, or other functions that are germane to educational experiences.

Projects must match the identified needs or functional limitations and the demands of educational tasks with the functions and features of the proposed devices or support systems to be developed and, on that basis, build a compensatory technology prototype. If

possible, projects are encouraged to use components or features from existing, "off-the-shelf" technologies or to adapt innovations from other sectors.

Projects must include testing of the prototype, or its primary design features to determine the soundness of the engineering, the adequacy of the design, whether it compensates for the disability for which the project is designed, whether it is feasible to operate and maintain in a school setting, and whether future production and distribution are feasible. The testing must also determine whether and how the use of this prototype is an improvement over existing technologies, and whether the prototype has the potential to become a marketable product.

Projects must indicate the potential target audiences that might be able to use features of the prototype design or the prototype itself. If the prototype is a marketable product, projects must identify developers or manufacturers with potential to produce the prototype. Projects must also disseminate information about design features, principles, and issues to researchers and developers in the field even if the testing of the prototype does not support the feasibility of using the prototype. This dissemination could be accomplished through presentations at meetings, publications, and the activities of national information centers.

Intergovernmental Review

The Technology, Educational Media, and Materials for the Handicapped Program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Authority: 20 U.S.C. 1461.

(Catalog of Federal Domestic Assistance Number 84.180, Technology, Educational Media, and Materials for the Handicapped Program)

Dated: March 1, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-8926 Filed 4-17-90; 8:45 am]

BILLING CODE 4000-01-M

Register

Wednesday
April 18, 1990

Part V

Department of Education

Office of Elementary and Secondary Education

34 CFR Parts 76, 77, and 298

Federal, State, and Local Partnership for Educational Improvement; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 76, 77, and 298

RIN 1810-AA49

Federal, State, and Local Partnership for Educational Improvement

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations in part 298 implementing the program entitled "Federal, State, and Local Partnership for Educational Improvement" in chapter 2 of title I of the Elementary and Secondary Education Act of 1965, as amended. This program replaces chapter 2 of the Education Consolidation and Improvement Act of 1981. The Secretary also makes certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to these regulations. Accordingly, the Secretary makes conforming changes to several sections in parts 76 and 77.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Genevieve W. Cornelius, Director, Division of Formula Grants, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 2040), Washington, DC 20202-4636, (202) 732-4064.

SUPPLEMENTARY INFORMATION: On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-297. Title I of that act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal education programs. Chapter 2 of title I of the ESEA, entitled "Federal, State, and Local Partnership for Educational Improvement," reauthorizes chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA).

Chapter 2 of the ECIA consolidated over forty Federal education programs into a single authorization of grants to States for the same purposes as the antecedent programs but to be used in accordance with the educational needs and priorities of State and local educational agencies as determined by those agencies. State educational agencies (SEAs) had the basic responsibility for the administration of chapter 2 funds. Responsibility for the design and implementation of chapter 2 programs, however, rested mainly with local educational agencies (LEAs), school superintendents and principals, and classroom teachers and supporting personnel.

In reauthorizing chapter 2, Congress recognized that the program had been "successful in achieving the goals of increasing local flexibility, reducing administrative burden, providing services for private school students, encouraging innovation, and contributing to the improvement of elementary and secondary education programs." 20 U.S.C. 2911(a). As a result, Congress retained the basic framework of chapter 2, which places decisionmaking at the State and local levels. At the same time, however, Congress responded to criticism that chapter 2 was unfocused, provided insufficient accountability, and sometimes resulted in funds being used for general education purposes. Accordingly, Congress sought to make chapter 2 "a better vehicle for school improvement by recasting the uses of funds in general terms, but with an identifiable theme of improving quality and promoting innovation." H.R. Rept. 95, 100th Cong., 1st Sess. 50 (1987). Specifically, Congress identified six broad purposes for which chapter 2 funds must now be targeted: Programs for at-risk students; programs to acquire and use instructional materials to improve the quality of instruction; innovative programs for schoolwide improvements, including effective school programs; programs of training and professional development; programs to enhance personal excellence of students and student achievement; and other innovative projects to enhance the educational program and climate of the school. Within those parameters, however, State and local educational agencies retain the flexibility to decide how to use their chapter 2 funds.

On March 1, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the *Federal Register* (54 FR 8708). The preamble also included a summary of the significant changes resulting from reauthorization. In the NPRM, the Secretary also proposed assisting States

in improving financial accountability and consistency by making certain provisions of EDGAR applicable.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, sixty-five parties submitted comments on the proposed regulations. An analysis of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Section 298.2(a)(1)(vi) of these final regulations makes applicable 34 CFR part 85—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants). A fuller discussion of how part 85 applies to the chapter 2 program is included in the appendix.

After extensive review of State comments, in the final rule the Secretary modified the applicability of EDGAR in ways that fully meet the substantive concerns of some States, while balancing the need for all States to have appropriate systems of financial accountability.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these final regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the program governed by these regulations supports and strengthens the family by providing for systematic consultation with the parents of children attending elementary and secondary schools in the design, planning, and implementation of the program. Moreover, funds under this program may be used to foster parental involvement through such activities as conducting parent workshops, training parents to work with their children at home, and facilitating parent participation in school activities.

List of Subjects in 34 CFR Parts 76, 77, and 298

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—

education, Private schools, Reporting and recordkeeping requirements, State-administered programs.

(Catalog of Federal Domestic Assistance Number 84.151, Federal, State, and Local Partnership for Educational Improvement)

Dated: April 11, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends parts 76 and 77 and revises part 298 of title 34 of the Code of Federal Regulations as follows:

1. Part 298 is revised to read as follows:

PART 298—FEDERAL, STATE, AND LOCAL PARTNERSHIP FOR EDUCATIONAL IMPROVEMENT

Subpart A—How a State or Local Educational Agency Obtains Funds

Sec.

- 298.1 Purpose.
- 298.2 Applicable regulations.
- 298.3 Definitions.
- 298.4 State advisory committee.
- 298.5 State applications.
- 298.6 LEA applications.
- 298.7 Allocation of Chapter 2 funds to LEA.
- 298.8 Reallocation.
- 298.9–298.10 [Reserved]

Subpart B—Project Requirements That a State or Local Educational Agency Must Meet

- 298.11 General responsibilities of State and local educational agencies.
- 298.12 Targeted assistance programs.
- 298.13 Use of funds by SEAs.
- 298.14 Use of funds by LEAs.
- 298.15 Evaluations and reports.
- 298.16–298.20 [Reserved]

Subpart C—Fiscal Requirements That a State or Local Educational Agency Must Meet

- 298.21 Maintenance of effort.
- 298.22 Waiver of the maintenance of effort requirement.
- 298.23 Supplement-not-supplant.
- 298.24–298.30 [Reserved]

Subpart D—How Children Enrolled in Private Schools Participate

- 298.31 Responsibility of SEAs and LEAs.
- 298.32 Consultation with private school officials.
- 298.33 Needs, number of children, and types of services.
- 298.34 Factors used in determining equitable participation.
- 298.35 Funds not to benefit a private school.
- 298.36 Equipment and supplies.
- 298.37 Construction.
- 298.38 Bypass.
- 298.39–298.40 [Reserved]

Authority: 20 U.S.C. 2911–2952, 2971–2976, unless otherwise noted.

Subpart A—How a State or Local Educational Agency Obtains Funds

§ 298.1 Purpose.

Under the Federal, State, and Local Partnership for Educational Improvement program (referred to in this part as the chapter 2 program), the Secretary provides Federal financial assistance to State and local educational agencies to—

(a) Provide the initial funding to implement promising educational programs that can be supported with State and local funds after those programs have been demonstrated to be effective;

(b) Provide a continuing source of innovation, educational improvement, and support for library and instructional materials;

(c) Meet the special educational needs of at-risk and high-cost students;

(d) Enhance the quality of teaching and learning through initiating and expanding effective schools programs; and

(e) Meet their educational needs and priorities for targeted assistance.

(Authority: 20 U.S.C. 2911(b))

§ 298.2 Applicable regulations.

(a) The following regulations apply to the chapter 2 program:

(1) The Education Department General Administrative Regulations (EDGAR) as follows:

(i) 34 CFR part 76 (State-Administered Programs) as follows:

(A) Subpart A (General), except for § 76.3 (ED general grant regulations apply to these programs).

(B) Sections 76.125–76.137

(Consolidated Grant Applications for Insular Areas).

(C) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(D) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?) as follows:

(1) Section 76.500 (Federal statutes and regulations on nondiscrimination).

(2) Section 76.532 (Use of funds for religion prohibited).

(3) Section 76.533 (Acquisition of real property; construction).

(4) Section 76.534 (Use of tuition and fees restricted).

(5) Section 76.563 (Restricted indirect cost rate—programs covered).

(6) Section 76.592 (Federal evaluation—satisfying requirement for State or subgrantee evaluation).

(7) 34 CFR 75.601–75.602, 75.609–75.611, 75.613, and 75.616 concerning construction authorized under § 298.37(b), incorporated by reference in § 76.600.

(8) Sections 76.670–76.677 (Procedures for Bypass).

(9) Section 76.682 (Treatment of animals).

(E) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?) as follows:

(1) Section 76.703 (When a State may begin to obligate funds).

(2) Section 76.704 (When certain subgrantees may begin to obligate funds).

(3) Section 76.705 (Funds may be obligated during a "carryover period").

(4) Section 76.706 (Obligations made during a carryover period are subject to current statutes, regulations, and applications).

(5) Section 76.707 (When obligations are made).

(6) Section 76.730 (Records related to grant funds).

(7) Section 76.734 (Record retention period).

(8) Section 76.740 (Protection of and accessibility to student records).

(9) Section 76.760 (More than one program may assist a single activity).

(10) Section 76.783 (State educational agency action—subgrantee's opportunity for a hearing).

(F) Section 76.901 (Education Appeal Board).

(ii) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(iii) 34 CFR part 78 (Education Appeal Board).

(iv) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(v) 34 CFR part 82 (New Restrictions on Lobbying).

(vi) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(2) The regulations in this part 298.

(b)(1) A State shall have fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State and local governments.

(2) A State may satisfy this requirement by—

(i) Using fiscal and administrative requirements applicable to the use of its own funds;

(ii) Adopting new fiscal and administrative requirements; or

(iii) Applying the provisions in 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) and in 34 CFR 75.603–75.608, 75.612, 75.614, and 75.615 (concerning construction authorized under § 298.37(b)).

(Authority: 20 U.S.C. 2911–2952, 2971–2976)

§ 298.3 Definitions.

(a) *Definition in the Elementary and Secondary Education Act of 1965.* The following terms used in this part are defined in section 1471 of the Act:

Construction
Elementary school
Equipment
Free public education
Local educational agency (LEA)
Parent
Pupil services
Pupil services personnel
School facilities
Secondary School
Secretary
State
State educational agency (SEA)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Fiscal year
Grant
Minor remodeling
Nonprofit
Private
Public

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Chapter 2 means chapter 2 of title I of the Act.

(Authority: 20 U.S.C. 2891, 2911–2952, 2971–2976)

§ 298.4 State advisory committee.

(a) Any State that desires to receive a grant under this part shall establish an advisory committee that meets the requirements in section 1522(a)(2) of the Act.

(b) An existing organization may be the advisory committee for the purpose of paragraph (a) of this section if the organization—

(1) Is not the SEA under State law;
(2) Is appointed by the Governor to be the advisory committee; and

(3) Meets the representation requirements of section 1522(a)(2) of the Act.

(c) The State advisory committee advises the SEA on—

(1) The allocation among targeted programs under § 298.12 of funds reserved for State use under section 1512(a) of the Act;

(2) The formula for the allocation of funds to LEAs; and

(3) The planning, development, support, implementation, and evaluation of State programs assisted under this part.

(Authority: 20 U.S.C. 2932(a) (2))

§ 298.5 State applications.

(a)(1) Any State that desires to receive a grant under this part shall submit an application to the Secretary that meets the requirements in section 1522 of the Act.

(2) The application may be submitted in any form that the State determines is appropriate.

(b)(1) A State shall file its chapter 2 application for a period not to exceed three years.

(2) If a State that submits an application covering more than one year makes any substantial changes in its application, the State shall—

(i) File a new application; or
(ii) Annually amend its current application to reflect those changes.

(Approved by the Office of Management and Budget under control number 1810–0053)

(Authority: 20 U.S.C. 2932)

§ 298.6 LEA applications.

(a) An LEA may receive its allocation of funds under this part for any year for which—

(1) The LEA has an application on file with the SEA; and

(2) The SEA has certified that the application meets the requirements in section 1533(a) of the Act.

(b)(1) An LEA shall file its application for a period not to exceed three years.

(2) If an LEA that submits an application covering more than one year makes any substantial changes in its application, the LEA shall—

(i) File a new application; or
(ii) Annually amend its current application to reflect those changes.

(c) In addition to the other requirements in section 1533(a) of the Act, an LEA's application must provide for systematic consultation, in the allocation of funds for programs authorized by chapter 2 and in the design, planning, and implementation of those programs, with—

(1) Parents of children attending public and private elementary and

secondary schools in the area served by the LEA;

(2) Teachers and administrative personnel in those schools; and

(3) Other groups involved in the implementation of chapter 2 (such as librarians, school counselors, school social workers, school psychologists, and other pupil services personnel) as the LEA deems appropriate.

(d) An LEA may apply for chapter 2 funds by itself or with a consortium of LEAs.

(Approved by the Office of Management and Budget under control number 1810–0053)

(Authority: 20 U.S.C. 2943)

§ 298.7 Allocation of chapter 2 funds to LEAs.

(a) An SEA shall distribute to each LEA that has submitted an application as required in § 298.6 the amount of its allocation as determined under paragraph (b) of this section.

(b)(1) From the funds made available to an SEA each year under this part, the SEA shall distribute not less than 80 percent to LEAs within the State according to the relative enrollments in public and private, nonprofit schools within the school districts of those agencies.

(2) The SEA shall—

(i) Calculate relative enrollments within each LEA on the basis of the total number of children enrolled for the fiscal year preceding the fiscal year in which the determination is made in—

(A) Public schools in the LEA; and

(B) Private, nonprofit schools in the LEA that desire that their children participate in chapter 2 programs; and

(ii) Adjust those relative enrollments, in accordance with criteria approved by the Secretary under paragraph (d) of this section, to provide higher per pupil allocations only to LEAs that serve the greatest numbers or percentages of—

(A) Children living in areas with high concentrations of low-income families;

(B) Children from low-income families; or

(C) Children living in sparsely populated areas.

(c) The State shall include in its application under § 298.5 the following information concerning adjustments under paragraph (b)(2)(ii) of this section:

(1) How the State adjusted its formula.

(2) How the children under paragraph (b)(2)(ii) of this section are defined.

(3) The basis on which the State determined which LEAs serve the greatest numbers or percentages of the children described in paragraph (b)(2)(ii) of this section.

(4) The percentage of the funds for LEAs that the State proposes to allot on an adjusted basis.

(d) The Secretary reviews and approves the State's criteria for adjusting allocations to LEAs if the criteria are reasonably calculated to produce an adjusted allocation that reflects the relative needs within the State's LEAs based on the factors contained in paragraph (b)(2)(ii) of this section.

(Approved by the Office of Management and Budget under control number 1810-0053)

(Authority: 20 U.S.C. 2922)

§ 298.8 Reallocation.

(a) An SEA reallocate to other LEAs chapter 2 funds—

(1) From an LEA that—

(i) Does not participate in the chapter 2 program; or

(ii) Has chapter 2 funds that exceed the amount required to—

(A) Operate its chapter 2 projects during the current fiscal year in accordance with its approved application; and

(B) Provide a prudent and justifiable reserve of chapter 2 funds for operating its chapter 2 projects effectively during the next fiscal year; or

(2) That are recovered by the State based on a determination by the State that the LEA has failed to spend LEA chapter 2 funds in accordance with applicable law.

(b) A reallocation of funds under this section—

(1) May be made only during the fiscal year for which the funds were appropriated or during the succeeding fiscal year;

(2) Must be made in accordance with the purposes of chapter 2; and

(3) Must be spent in accordance with the requirements in chapter 2 and the regulations in this part.

(Authority: 20 U.S.C. 2922)

§§ 298.9-298.10 [Reserved]

Subpart B—Project Requirements That a State or Local Educational Agency Must Meet

§ 298.11 General responsibilities of State and local education agencies.

(a) *State educational agencies.* (1)(i) Except as provided in paragraph (a)(1)(ii) of this section, an SEA has the basic responsibility for the administration and supervision of programs assisted with chapter 2 funds. This responsibility must be carried out with a minimum of paperwork.

(ii) Apart from providing technical and advisory assistance and monitoring compliance with chapter 2, an SEA may

not exercise any influence in the decisionmaking processes of an LEA concerning the expenditures described in the LEA's application.

(2) To carry out its responsibilities, an SEA may, in accordance with State law, issue rules, regulations, or policies relating to the administration and operation of programs funded under this part provided that those rules, regulations, or policies do not conflict with the provisions of—

(i) Chapter 2;

(ii) The regulations in this part, including the discretion granted to SEAs under paragraph (b) of this section; or

(iii) Other applicable Federal statutes and regulations.

(b) *Local educational agencies.* (1) An LEA has complete discretion, subject only to the limitations and requirements of chapter 2, in determining how funds the agency receives under section 1512 of the Act are distributed among the areas of targeted assistance in accordance with the LEA's chapter 2 application.

(2) In exercising this discretion, the LEA shall ensure that each expenditure of chapter 2 funds—

(i) Carries out the purposes of chapter 2; and

(ii) Meets the educational needs within the schools of that LEA.

(Authority: 20 U.S.C. 2911(c), 2932, 2943(c))

§ 298.12 Targeted assistance programs.

(a) Consistent with paragraph (b) of this section, chapter 2 funds may be used for the planning, development, operation, and expansion of the following:

(1) Programs to meet the educational needs of—

(i) Students at risk of failure in school;

(ii) Students at risk of dropping out of school; and

(iii) Students for whom providing an education entails higher than average costs.

(2) Programs for the acquisition and use of instructional and educational materials, including library books, reference materials, computer software and hardware for instructional use, and other curricular materials that would be used to improve the quality of instruction.

(3) Innovative programs designed to carry out schoolwide improvements, including effective schools programs under sections 1541-1542 of the Act.

(4) Programs of training and professional development to enhance the knowledge and skills of educational personnel, including teachers, librarians, school counselors, school social workers, school psychologists and other pupil services personnel, and

administrators and school board members.

(5) Programs designed to enhance personal excellence of students and student achievement, including instruction in ethics, performing and creative arts, humanities, activities in physical fitness and comprehensive health education, and participation in community service projects.

(6) Innovative projects to enhance the educational program and climate of the school, including programs for gifted and talented students, technology education programs, early childhood education programs, community education and programs for youth suicide prevention.

(b) Except to purchase computer hardware for instructional purposes under section 1531(b)(2) of the Act, chapter 2 funds may not be used to purchase instructional equipment unless that instructional equipment is used as a part of a program under paragraph (a) of this section.

(c) In conducting targeted assistance programs under this section, an SEA or LEA may use chapter 2 funds to make grants to and to enter into contracts with LEAs, institutions of higher education, libraries, museums, and other public and private nonprofit agencies, organizations, and institutions.

(Authority: 20 U.S.C. 2941-2942, 2951-2952)

§ 298.13 Use of funds by SEAs.

(a) *Authorized activities.* An SEA may use chapter 2 funds reserved for State use only for—

(1) State administration of chapter 2 programs, subject to paragraph (b)(1) of this section, including—

(i) Supervising the allocation of chapter 2 funds to LEAs;

(ii) Planning, supervising, and processing chapter 2 funds reserved for State use;

(iii) Monitoring and evaluating chapter 2 programs and activities; and

(iv) Operating the State advisory committee.

(2) Assistance to LEAs to provide targeted assistance under § 298.12 in the form of—

(i) Direct grants to LEAs;

(ii) Statewide activities; and

(iii) Technical assistance.

(3) Assistance to LEAs and statewide activities, in accordance with paragraph (b)(2) of this section, to carry out effective schools programs under sections 1541-1542 of the Act.

(b) *Limitations.*—(1) *State administration.* An SEA may not use more than 25 percent of the chapter 2 funds reserved for State use in any fiscal

year for State administration under paragraph (a)(1) of this section.

(2) *Effective schools programs.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an SEA shall use at least 20 percent of the chapter 2 funds reserved for State use in any fiscal year for effective schools programs under sections 1541-1542 of the Act.

(ii) If a State is spending from non-Federal funds an amount equal to twice the amount required under paragraph (b)(2)(i) of this section, the SEA may request the Secretary to waive the requirement in that paragraph by submitting a written request that includes—

(A) The amount the State is spending from non-Federal funds for effective schools programs; and

(B) A description of those effective schools programs that addresses the factors in section 1542 of the Act.

(Approved by the Office of Management and Budget under control number 1810-0053).

(Authority: 20 U.S.C. 2931, 2941-2942, 2951-2952)

§ 298.14 Use of funds by LEAs.

(a) *General.* An LEA may use chapter 2 funds to support one or more of the targeted assistance programs under § 298.12.

(b) *Special rules.* (1) If an LEA receives additional chapter 2 funds as a result of adjusted allocations under § 298.7(b)(2)(ii), the LEA may, at its discretion, use those funds either—

(i) To provide services to children enrolled in public and private, nonprofit schools in accordance with § 298.34(a)(2); or

(ii) To provide services only to children enrolled in schools—both public and private—in which children described in § 298.7(b)(2)(ii) are enrolled.

(2) If, in any fiscal year, an LEA uses chapter 2 funds under paragraph (b)(1)(ii) of this section, the LEA shall—

(i) Use all funds received as a result of adjusted allocations in that manner; and

(ii) Use in each school with children described in § 298.7(b)(2)(ii) the amount generated by those children who are enrolled in that school.

(3) An LEA is not required to use chapter 2 funds received under § 298.7(b)(2)(ii) to provide services to the children who generated those funds.

(Authority: 20 U.S.C. 2922(c)(2), 2941-2942, 2951-2952)

§ 298.15 Evaluations and reports.

(a) *LEA responsibilities.* (1) An LEA shall—

(i) Report annually to the SEA on the LEA's use of funds under § 298.14; and

(ii) Make that report available to the public.

(2) The LEA shall provide other information to the SEA as reasonably may be required for fiscal audit and program evaluation consistent with the SEA's responsibilities under this part.

(b) *SEA responsibilities.* (1) An SEA shall submit annually to the Secretary data on—

(i) The use of chapter 2 funds by the SEA and LEAs;

(ii) The types of services provided; and

(iii) The children to whom services were provided.

(2) In fiscal year 1992, the SEA shall—

(i) Evaluate the effectiveness of State and local programs conducted under this part;

(ii) Submit the evaluation to the State advisory committee for review and comment;

(iii) Make the evaluation available to the public; and

(iv) Submit a copy of the evaluation and a summary of the LEA's reports under paragraph (a)(1) of this section to the Secretary.

(3) The SEA shall provide other information to the Secretary as may be required for fiscal audit and program evaluation.

(Approved by the Office of Management and Budget under control number 1810-0053)

(Authority: 20 U.S.C. 2932(a)(6)-(7), 2943(a)(4), 2973)

§§ 298.16-298.20 [Reserved]

Subpart C—Fiscal Requirements That a State or Local Educational Agency Must Meet

§ 298.21 Maintenance of effort.

(a) *Basic standard.* (1) Except as provided in § 298.22, the Secretary pays a State its full allocation of funds under this part if the Secretary finds that either the combined fiscal effort per student or the aggregate expenditures within the State with respect to the provisions of free public education for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or of the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is

fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the twelve-month fiscal period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending June 30, 1987.

(3)(i) *Expenditures to be considered.*

The expenditures the Secretary considers in determining a State's compliance with the maintenance of effort requirement in this paragraph are State and local expenditures for free public education. These include expenditures for administrative, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Expenditures not to be considered.* The Secretary does not consider the following expenditures in determining a State's compliance with the maintenance of effort requirement in this paragraph:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures of Federal funds.

(b) *Failure to maintain effort.* (1) If a State fails to maintain effort and a waiver under § 298.22 is not appropriate, the Secretary reduces the State's allocation of funds under this part in the exact proportion by which the State fails to meet 90 percent of both the State's combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the State) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the State failed to maintain effort, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a State fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State maintained effort during the next fiscal year (1991), the Secretary considers the State's expenditures for the second preceding fiscal year (1988) (the year that caused the State's failure to maintain effort) to be no less than 90 percent of the State's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2971(a))

§ 298.22 Waiver of the maintenance of effort requirement.

(a) *Waiver request.* A State that has not maintained its fiscal effort as required in § 298.21(a) may ask the Secretary to grant a waiver of that requirement by submitting a waiver request that includes—

(1) A statement of the combined fiscal effort per student and the aggregate expenditures for the two fiscal years being compared; and

(2) A description of the circumstances that the State considers to be exceptional or uncontrollable.

(b) *Secretary's criteria.* (1) The Secretary may grant a waiver, for one year only, of the maintenance of effort requirement in § 298.21(a) if the Secretary determines that the waiver is equitable due to exceptional or uncontrollable circumstances. Exceptional or uncontrollable circumstances include—

(i) A natural disaster;

(ii) A precipitous and unforeseen decline in the financial resources of the State; or

(iii) Other exceptional or uncontrollable circumstances.

(2) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(c) *Effect of a waiver.* (1) If the Secretary grants a waiver under paragraph (b) of this section, the Secretary allocates to the affected State its full allocation of chapter 2 funds.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the Secretary considers the fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the State) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a State secures a waiver because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the State maintained effort during the next fiscal year (1991), the Secretary considers the State's expenditures for the second preceding fiscal year (1988) (the year for which the State needed a waiver) to be no less than 90 percent of the State's expenditures in the prior fiscal year (1987).

(Approved by the Office of Management and Budget under control number 1810-0053)

(Authority: 20 U.S.C. 2971(a))

§ 298.23 Supplement-not-supplant.

An SEA or LEA that receives chapter 2 funds—

(a) May use and allocate those funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds made available under chapter 2, be made available from non-Federal sources; and

(b) May not use chapter 2 funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 2971(b))

§§ 298.24–298.30 [Reserved]**Subpart D—How Children Enrolled in Private Schools Participate****§ 298.31 Responsibility of SEAs and LEAs.**

(a)(1) An LEA shall provide children enrolled in private schools in that LEA with secular, neutral, and nonideological services, materials, and equipment or other benefits that will ensure equitable (as compared to children enrolled in public schools) participation of private school children in the purposes and benefits of chapter 2 in accordance with the requirements in §§ 298.32–298.37 and section 1572 of the Act.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and needs of private school children in the school district of the LEA.

(3) The LEA shall exercise administrative direction and control over chapter 2 funds and property that benefit children enrolled in private schools.

(4)(i) Provision of services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, association, agency, or corporation that, in the provision of those services, is independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b)(1) An SEA shall—

(i) Ensure that each LEA complies with the requirements of §§ 298.32–298.37; or

(ii) If no chapter 2 project is carried out by an LEA, make arrangements—such as through contracts with nonprofit agencies or organizations—under which children in private schools in that LEA are provided with services and materials to the extent that would have occurred if the LEA had received chapter 2 funds.

(2) If an SEA conducts instructional programs or personnel training programs, it shall comply with these requirements as if it were an LEA.

(c) Under sections 1522(a)(3)(B) and 1533 (a)(1)(B) of the Act, an application by an SEA or LEA must contain the planned allocation of funds required to implement section 1572.

(d) In accordance with section 1572(a)(1) of the Act, the regulations in this subpart only apply to children enrolled in private, nonprofit elementary and secondary schools.

(Authority: 20 U.S.C. 2972)

§ 298.32 Consultation with private school officials.

In order to receive chapter 2 funds, an LEA shall—

(a) Contact annually appropriate officials from private schools within the area served by the LEA to determine whether those officials desire that their children participate in the chapter 2 program; and

(b) With respect to those officials in schools with children who will participate, consult regarding the development and implementation of the chapter 2 program before the LEA makes any decision that affects the opportunities of private school children to participate in the program.

(Authority: 20 U.S.C. 2922(b)(1), 2972)

§ 298.33 Needs, number of children, and types of services.

An LEA shall determine the following matters on a basis comparable to that used by the LEA in providing for participation of public school children:

(a) The needs of children enrolled in private schools.

(b) The number of those children who will participate in the chapter 2 program.

(c) The chapter 2 services that the LEA will provide to those children.

(Authority: 20 U.S.C. 2972)

§ 298.34 Factors used in determining equitable participation.

(a) *Equal expenditures.* (1) Expenditures for chapter 2 programs for children enrolled in private schools must be equal (consistent with the number of children to be served) to expenditures for chapter 2 programs for children enrolled in the public schools of an LEA, taking into account the needs of the individual children and other factors that relate to such expenditures.

(2) Except as provided in § 298.14(b)(1)(ii), in determining whether expenditures are equal under paragraph (a)(1) of this section, an LEA—

(i) May not take into account the extent to which children in private schools generated a portion of the LEA's allocation under § 298.7(b)(2)(ii); but

(ii) May take into account differences in the costs per child of meeting the

needs of the individual children to be served and other factors that relate to these expenditures, as provided in paragraph (a)(1) of this section.

(b) *Services on an equitable basis.* (1) In addition to meeting the equal expenditures requirement in paragraph (a) of this section, an LEA shall provide for the participation in the chapter 2 program of children enrolled in private schools on an equitable basis.

(2)(i) In determining whether an LEA is providing for participation on an equitable basis, the services provided to private school children and the services provided to public school children are considered.

(ii) If an LEA uses chapter 2 funds to concentrate programs for public school children on a particular group, attendance area, or grade or age level, the LEA shall ensure equitable opportunities for participation by children enrolled in private schools who—

(A) Have the same needs as the public school children to be served; and

(B) Are in that group, attendance area, or grade or age level.

(iii) If the needs of children enrolled in private schools are different from the needs of children enrolled in public schools, an LEA shall provide chapter 2 services for the private school children that address their needs on an equitable basis.

(Authority: 20 U.S.C. 2972)

§ 298.35 Funds not to benefit a private school.

(a) An LEA may only use chapter 2 funds to provide services that supplement, and in no case supplant, the level of services that would, in the absence of chapter 2 services, be available to children enrolled in a private school.

(b) An LEA shall use chapter 2 funds to meet the needs of children enrolled in a private school, but not for the purpose of aiding the private school.

(Authority: 20 U.S.C. 2972)

§ 298.36 Equipment and supplies.

(a) To meet the requirements of section 1572(c) of the Act, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with chapter 2 funds.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used for chapter 2 purposes;

(2) Are used for secular, neutral, and nonideological purposes; and

(3) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for chapter 2 purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than chapter 2 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: 20 U.S.C. 2972)

§ 298.37 Construction.

(a) No chapter 2 funds may be used to perform repairs, minor remodeling or construction of private school facilities.

(b) An LEA may use chapter 2 funds to perform repairs, minor remodeling, or construction of public facilities as may be necessary to carry out its responsibilities under this subpart.

(Authority: 20 U.S.C. 2972)

§ 298.38 Bypass.

(a) The Secretary implements a bypass if an SEA or LEA—

(1) Is prohibited by law from providing chapter 2 services for private school children on an equitable basis; or

(2) Has substantially failed, or is unwilling, to provide services for private school children on an equitable basis.

(b) If the Secretary implements a bypass, the Secretary—

(1) Waives an SEA's or LEA's responsibility for providing chapter 2 services for private school children and arranges to provide the required services;

(2) Consults with appropriate public and private school officials; and

(3) Deducts the cost of these services, including any administrative costs, from the appropriate allotment of chapter 2 funds provided to the State.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: 20 U.S.C. 2972 (d), (e), (g))

§§ 298.39-298.40 [Reserved]

PART 76—STATE-ADMINISTERED PROGRAMS

2. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted

§ 76.1 [Amended]

3. Section 76.1 is amended by removing paragraph (c) and by revising the authority citation at the end of the section to read as follows:

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

4. Section 76.401 is amended by adding a new paragraph (a)(9) to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) * * *

(9) Federal, State, and Local Partnership for Educational Improvement.

5. Section 76.563 is revised to read as follows:

§ 76.563 Restricted indirect cost rate—programs covered.

If a State or a subgrantee decides to charge indirect costs to a program that has a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds, the State or subgrantee shall use a restricted indirect cost rate computed under 34 CFR 75.564-75.568.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b))

§ 76.734 [Amended]

6. Section 76.734 is amended by removing "Unless a longer period is required under 34 CFR part 74, a" and adding "A" in its place.

§§ 76.2, 76.50, 76.51, 76.401, 76.500, 76.532, 76.533, 76.534, 76.600, 76.703, 76.704, 76.707, and 76.760 [Amended]

7. The authority citations for the following sections are amended by adding ", 2974(b)" before the final parenthesis:

§ 76.2
§ 76.50
§ 76.51
§ 76.401
§ 76.500
§ 76.532
§ 76.533
§ 76.534
§ 76.600
§ 76.703
§ 76.704
§ 76.707
§ 76.760

§ 76.125 [Amended]

8. The authority citation for § 76.125 is amended by adding, before "and", "2974(b)",

§ 76.707 [Amended]

9. The table in § 76.707 is amended by removing "under the cost principles in appendices C-F to 45 CFR part 74" in paragraph (h).

10. The following undesignated cross-references are removed from part 76:

(a) The cross-references following §§ 76.50, 76.305, 76.530, 76.702, and 76.734.

(b) The cross-references preceding §§ 76.140-76.142, 76.600, 76.682-76.690, 76.720-76.722, 76.730-76.734, 76.770-76.772, and 76.900-76.910.

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

11. The authority citation for part 77 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

§ 77.1 [Amended]

12. The authority citation following § 77.1 is revised to read as follows:

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474)

Note: This appendix will not be codified in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes**Section 298.1—Purpose**

Comment: A number of commenters requested clarification of the terms "initial funding" in § 298.1(a) and "continuing source" in § 298.1(b). The commenters questioned whether the language in § 298.1(a) limits the period of time for which an activity can be conducted with Chapter 2 funds or whether Chapter 2 is to be a continuing source of funding for an activity.

Discussion: There is no specific limitation on the length of time Chapter 2 funds may be used to support a program. Section 298.1 accurately states the purpose of Chapter 2 as articulated in section 1501(b) of the Act: To provide the initial funding to implement promising educational programs that can be supported by State and local sources of funding after those programs are demonstrated to be effective; to provide a continuing source of innovation, improvement, and support for library and instructional materials; to meet the special educational needs of at-risk and high-cost students; to enhance the quality of teaching and learning through effective schools programs; and to allow SEAs and LEAs to meet their educational needs and priorities for targeted assistance. No one part of this section takes precedence over any other part. Rather, it offers options to an LEA. The LEA must, however, use chapter 2 funds for a targeted assistance program as described in section 1531(b) of the Act.

Changes: None.

Section 298.2—Applicable Regulations

Comment: Several commenters recommended that the final regulations

clarify the extent to which construction is an allowable cost under chapter 2.

Discussion: Section 76.533 of the Education Department General Administrative Regulations (EDGAR) sets out the general rule concerning construction—namely, that no SEA or LEA may use funds "for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program." With one limited exception, neither the chapter 2 statute nor the final regulations permits the use of chapter 2 funds for acquisition of real property or for construction. Therefore, under § 76.533, chapter 2 funds generally may not be used for those purposes. The exception is contained in section 1572(a) of chapter 2 and § 298.37 of the final regulations. Those provisions authorize an LEA to use chapter 2 funds to perform repairs, minor remodeling, or construction of public facilities as may be necessary to carry out its responsibilities to provide equitable chapter 2 services to private school children. In this limited circumstance, the provisions of §§ 76.600 and 76.601-76.602, 76.609-76.611, 76.613, and 76.616 govern how construction is performed.

Changes: None.

Comment: A number of comments were received on § 298.2 concerning the applicability of selected sections of the Education Department General Administrative Regulations (EDGAR). One commenter recommended that the section be deleted because the commenter believed the Education Consolidation and Improvement Act (ECIA) removed the requirement for chapter 2 to abide by EDGAR. One commenter applauded the use of EDGAR to provide direction and clarification. One commenter recommended that each State be allowed to use its own standards for fiscal control and accountability of chapter 2 funds. Several commenters recommended that § 76.730 of EDGAR not be made applicable since the commenters believed its inclusion would be duplicative of other fiscal control requirements in chapter 2 and would be unnecessarily burdensome.

Discussion: Congress intended, when it enacted chapter 2 of the ECIA, "to greatly reduce the enormous administrative and paperwork burden imposed on schools at the expense of their ability to educate children." In keeping with this purpose, the Department decided not to make the provisions of EDGAR applicable to chapter 2 of the ECIA, even though the statute did not preclude their applicability. During the seven years that EDGAR has not been applicable to chapter 2 of the ECIA, a number of States have incurred audit exceptions concerning fiscal control and fund accountability. In addition, SEAs and LEAs have asked the Department numerous questions that are answered by the provisions of EDGAR. Further, Congress identified lack of accountability as one of the primary deficiencies under chapter 2 of the ECIA. S. Rep. 222, 100th Cong., 1st Sess. 25 (1987). As a result, in order to provide additional guidance and to ensure that chapter 2 funds are spent only for authorized program purposes, the Secretary has made certain provisions of EDGAR applicable to programs under this part. In determining

which provisions to apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs.

The Secretary has not made part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applicable to programs under this part. Rather, § 298.2(b) of the final regulations requires States to have their own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must meet three general criteria, set forth in §§ 298.2(B)(1) (i)-(iii), that are designed to ensure the minimal standards necessary for proper management of chapter 2 funds. A State may adopt new requirements, or may use requirements applicable to the use of its own funds. In the alternative, a State may apply the provisions in part 80 and certain provisions in part 75 to satisfy this requirement. A State has complete discretion to choose among these alternatives. A State's procedures do not have to be approved by the Department, but must be available for Federal inspection. In the event a State's requirements are determined to be insufficient, the enforcement provisions in part E of the General Education Provisions Act (GEPA) apply, including the due process provisions in that part.

In addition, the Secretary has made applicable a limited number of provisions from part 76 (State-Administered Programs). For the most part, the applicable sections are statutorily required. For example, because chapter 2 contains a supplement-not-supplant requirement, § 76.563 applies, which requires an SEA or LEA to use a restricted indirect cost rate, computed in accordance with 34 CFR 75.564-75.568, if the SEA or LEA charges indirect costs to chapter 2. Similarly, the recordkeeping requirements in § 76.730, to which several commenters objected as burdensome and duplicative of other fiscal requirements, are required by section 437(a) of GEPA, made applicable to programs under this part by section 1575 of chapter 2. Section 76.730, which specifies what records an SEA or LEA must keep, does not duplicate other chapter 2 requirements and is not unduly burdensome. A few of the applicable sections are not required by statute but provide important rights to SEAs and LEAs that would not be available without the regulations. For example, §§ 76.703-76.704 apply, which permit States and subgrantees, respectively, to begin to obligate chapter 2 funds on the date their applications are submitted in substantially approvable form.

The Secretary had also made applicable selected definitions in part 77 (Definitions That Apply to Department Regulations), this due process procedures in part 78 (Education Appeal Board), the enforcement provisions in part 81 (General Education Provisions Act—Enforcement), and the debarment and suspension provisions in part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

The Secretary believes that making selected provisions of EDGAR applicable to programs under this part will address the need for better guidance and accountability. Moreover, the Secretary does not believe this action will create additional burden for SEAs and LEAs. The referenced provisions of EDGAR apply to other State-administered education programs. The EDGAR provisions have been recently reviewed with respect to federalism issues and burden reduction, and unduly burdensome requirements have been revised or removed.

Changes: To ensure the least possible burden on States, the Secretary has removed the proposed requirement in § 298.2(b)(1) that the States "formally adopt" their fiscal and administrative requirements for chapter 2. Instead, States are only required to "have" those requirements. Further, to avoid any misunderstanding, the Secretary has incorporated, in § 298.2(b)(2), all of the States' options for fiscal and administrative requirements, including use of requirements that apply to the States' own funds. Some States were concerned that OMB Circular A-87 not be made applicable to the chapter 2 program. The Secretary emphasizes that under the chapter 2 regulations, OMB Circulars A-87 and A-102, which are incorporated in 34 CFR part 80, do not apply to the Chapter 2 program unless a State chooses to do so.

Several conforming changes that are not inconsistent with the proposed regulations have also been made. First, § 76.3 concerning the Department's general grant regulations has been excluded because regulations proposing to delete it from part 76 have not become final. Second, § 76.617 concerning compliance with the Coastal Barrier Resource Act has been deleted because regulations proposing to add it to part 75 have not become final. Third, §§ 76.670-76.677 concerning procedures for implementing a bypass authorized by section 1572(d)-(i) of chapter 2 were inadvertently omitted from the proposed regulations and have been added. Finally, part 81 concerning enforcement provisions in GEPA has been added because it has become final since publication of the chapter 2 proposed regulations.

Comment: None.

Discussion: These final regulations make applicable 34 CFR part 82—New Restrictions of Lobbying and Part 85—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants). The regulations in part 82 were adopted on February 26, 1990 (55 FR 6736). The regulations in part 85 were adopted in two separate rulemaking actions. First, under Executive Order 12549, 27 executive agencies joined together to promulgate common regulations authorizing debarment and suspension of individuals and organizations for nonprocurement programs of the U.S. Government. The Department implements this Executive Order in subparts A-E of part 85 (regular debarment and suspension) (53 FR 19161 (May 26, 1988)). Second, under the Drug-Free Workplace Act of 1988, the 27 agencies were joined by seven other agencies to issue debarment and suspension

regulations implementing the new Act. The Department implements the Drug-Free Workplace Act of 1988 in subpart F of part 85 (Drug-Free Debarment and Suspension) 54 FR 4956 (Jan. 31, 1989).

The regular debarment and suspension regulations provide that statutory entitlements and mandatory awards (but not subter awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the Secretary from denying funding under this or any other State-administered program based on a regular debarment or suspension. The exception also would prevent the Department from denying assistance to a subgrantee under this program or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While the Department could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.110(a)(1)(i)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal Government.

As a result, if the Department discovered any activity by an administrator of this program that would constitute grounds for debarment, the debarment official for the Department would take action to debar the individual. Further, if a State continued to do business with the individual and paid for the individual's services with program funds, the Department would consider issuing a Program Determination Letter to the State to recover the program funds. Given these conclusions, the Secretary has determined that the Department must collect primary tier certifications from grantees under this and other State-administered programs. Under 34 CFR 85.510(a), however, a State need only certify as to its principals. The OMB-approved forms used by the Department at this time for primary tier transactions do not yet indicate that they only apply to principals. The Department will submit to OMB for approval a new form that would only apply to principals of a State.

Similarly, as to mandatory subgrantees, States must collect the lower tier certifications from both mandatory and discretionary lower tier participants. As with the primary tier certifications submitted by States under this program, the Department will submit a new lower tier certification form to OMB for approval that would apply only to principals of mandatory subgrantees. However, pending approval of the new forms, the Department will use the current forms with the understanding that they only apply to principals of States under State-administered programs and to principals of mandatory subgrantees under State-administered programs.

The drug-free debarment and suspension regulations require all grantees receiving a grant from any Federal agency to certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs such as chapter 2 to grantees that fail to meet the drug-free workplace requirements. Regarding the State certifications required under the drug-free debarment and suspension regulations, the Department will continue to use currently approved forms. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

Changes: Section 200.2(a)(1) has been revised to reference the applicability of 34 CFR parts 82 and 85.

Section 298.3—Definitions

Comment: A number of commenters pointed out that the proposed regulations permit more than one definition of equipment. For example § 298.3(a) of the proposed regulations states that the definition of equipment in section 1471 of the Act applies. However, § 298.2(b)(2) permits a State to adopt the provisions in 34 CFR part 80, which contains a broader definition. Several commenters recommended that the definition which allows the greatest flexibility should be selected for inclusion in the final regulations.

Discussion: These regulations use the definition of equipment found in section 1471 of the Act. However, for purposes of accountability, States are free to use the definition in 34 CFR part 80 if they wish. This approach maintains the consistency of the regulations with the chapter 2 statute while providing States with maximum flexibility in accounting for the use of Federal funds.

Changes: None.

Comment: A number of commenters suggested that the definition of "educational personnel" in § 298.3(c) be expanded to include school social workers and school psychologists.

Discussion: The definition of "educational personnel" was included in the proposed regulations to encompass a number of types of school employees who could participate in the benefits of chapter 2. The Secretary believes that this can be accomplished by including school social workers and school psychologists in §§ 298.6(c)(3) and 298.12(a)(4) and deleting the definition from the regulations. However, the lists in §§ 298.6(c)(3) and 298.12(a)(4) as modified are not intended to be exclusive lists. Other types of educational personnel may be included in chapter 2 services as appropriate.

Changes: Sections 298.6(c)(3) and 298.12(a)(4) have been changed to specifically include school social workers and school psychologists. The definition in § 298.3(c) has been deleted.

Section 298.4—State Advisory Committee

Comment: One commenter noted that the reference in § 298.4(b) to the State Board of Education as the State Advisory Committee is unnecessary since a State Board of Education meeting all the requirements could obviously serve as the committee. The

commenter felt that specifically referencing a specific organization encourages limiting the advisory or public input process. The commenter recommended the elimination of the reference.

Discussion: The Secretary agrees that any existing organization that meets the requirements of section 1522(a)(2) of the Act may be the State Advisory Committee and that it is unnecessary to make specific reference to a State Board of Education.

Changes: The phrase "including a State Board of Education" has been deleted from § 298.4(b).

Comment: One commenter recommended that a private school representative knowledgeable about chapter 2 should be a member of the State Advisory Committee.

Discussion: Section 298.4 references section 1522(a)(2) of the Act, which requires that the State Advisory Committee include individuals representative of private elementary and secondary school children.

Changes: None.

Section 298.6—LEA Applications

Comment: A number of commenters noted that there is no explicit requirement in § 298.6(c)(1) that the parents of children enrolled in private schools as well as private school personnel be included in the consultation process required by section 1533(a)(5) of the Act.

Discussion: Section 1533(a)(5) of the Act requires an LEA to provide, "in the allocation of [Chapter 2] funds * * * and in the design, planning, and implementation of [Chapter 2] programs, for systematic consultation with parents of children attending elementary and secondary schools in the area served by the local agency, [and] with teachers and administrative personnel in such schools."

* * * This requirement does not distinguish between parents of public and private school children. Thus, all parents are to be included in the consultation process. This requirement also includes private school personnel. Moreover, section 1572(a) of the Act and § 298.32 of the final regulations address consultation with appropriate private school officials.

Changes: Section 298.6(c)(1) has been revised to clarify that the consultation requirement in section 1533(a)(5) of the Act applies to parents of public and private school children. Accordingly, it follows in § 298.6(c)(2) that teachers and administrative personnel in public and private schools should also be consulted.

Comment: A number of commenters requested that school social workers and school psychologists be specifically added to the list in § 298.6(c)(3) of other groups involved in the implementation of chapter 2.

Discussion: The Secretary agrees that specifically adding school social workers and school psychologists to the list is appropriate. The list as modified, however, is not meant to be exclusive. An LEA may also consult with other groups involved in the implementation of chapter 2 if appropriate.

Changes: Section 298.6(c)(3) has been changed to include specifically school social workers and school psychologists.

Section 298.7—Allocation of Chapter 2 Funds to LEAs

Comment: Many commenters commented on § 298.7 of the proposed regulations concerning the allocation of Chapter 2 funds to LEAs. Specifically, the commenters objected to § 298.7(b)(2)(ii), which requires an SEA to provide adjusted allocations only to LEAs that serve the greatest numbers or percentages of children living in areas with high concentrations of low-income families, children from low-income families, or children living in sparsely populated areas. Some commenters believed that the regulation is unduly restrictive in limiting adjusted allocations only to LEAs that serve the greatest numbers or percentages of high-cost children. The commenters recommended that all LEAs with eligible children be allowed to receive funds. The commenters suggested that the State Advisory Committee be given the authority to allocate chapter 2 funds according to the best interests of the State. Similarly, other commenters criticized limiting the categories of high-cost children because many children whose education imposes a higher than average cost per child would not be included. The commenters recommended that a State be allowed to include other factors than those listed in § 298.7(b)(2)(ii) in calculating its formula for distributing chapter 2 funds to LEAs.

Discussion: Section 1512(a) of the Act sets out the general rule for distributing chapter 2 funds to LEAs. It requires an SEA to adjust its distribution formula "to provide higher per pupil allocations to [LEAs] which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as" children living in areas with high concentrations of low-income families, children from low-income families, and children living in sparsely populated areas. Section 1512(b)(2)(A) of the Act prescribes how the SEA must adjust its formula. In doing so, it contains two notable differences from section 1512(a): (1) It requires an SEA to distribute the "high-cost" funds only to LEAs with the greatest numbers or percentages of "high-cost" children; and (2) it limits the "high-cost" factors that an SEA may use to those in the statute.

As stated in § 298.7(b)(2)(ii) of the final regulations, the Secretary believes that the more specific provisions in section 1512(b)(2)(A) take precedence over the general rule in 1512(a). This decision is required by certain requirements in the Act. First, section 1512(b)(2)(B) of the Act requires the Secretary to review and approve a State's criteria "based on the factors set forth in [1512(b)(2)(A)]." Second, section 1522(a)(9) requires that a State's application indicate: (1) How the State will adjust its formula to comply with section 1512(b)(2); (2) how children under section 1512(b)(2)(A) are defined; (3) the basis on which a determination of the LEAs under section 1512(b)(2)(A) is made; and (4) the percentage of the State grant that the State proposes to allot on an adjusted basis. Given that Congress chose to require this specific information in a State's chapter 2 application, it seems clear Congress intended the provisions in section 1512(b)(2)(A) to apply.

This interpretation of Congress' intent is supported, in part, by the legislative history of section 565(a) of chapter 2 of the ECIA, the predecessor of section 1512(a). Under the Department's interpretation of section 565(a), an SEA could distribute "high-cost" funds to any LEA that had "high-cost" children. Dissatisfied with the Department's interpretation, the conferees indicated in the conference report accompanying technical amendments to the ECIA that "[i]t is the intent of the conferees that section 565(a) of the [ECIA] be interpreted such that State chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number of percentage of such children." H.R. Rep. 574, 98th Cong., 1st Sess. 15 (1983). Section 1512(b)(2)(A) requires this interpretation.

Despite a more restrictive statutory provision, the Secretary wishes to emphasize that States continue to have considerable flexibility in adjusting their formulas. A State may decide what percentage of chapter 2 funds is to be allocated on an adjusted basis. A State may also decide, within the statutory categories, how to define "high-cost" children and which categories to use.

Changes: None.

Section 298.12—Targeted Assistance Programs

Comment: A number of commenters recommended that the regulations clarify the language in section 1532(b) of the Act concerning the authority for SEAs and LEAs to enter into contracts and grants. The commenters expressed concern that section 1532(b) appears to limit their ability to enter into contracts with profit-making organizations and individuals, which would severely hamper a number of the activities they would otherwise conduct.

Discussion: Section 1532(b) of the Act states that, "[i]n order to conduct the activities authorized by this part, each State or local educational agency may use funds reserved for this part to make grants to and to enter into contracts with local educational agencies, institutions of higher education, libraries, museums, and other public and private non-profit agencies, organizations, and institutions." The conference report accompanying the Act indicates that the conference committee agreed to include this authority but specifically amended it to "limit[] private agencies to only those which are nonprofit." H.R. Rept. 567, 100th Cong., 2d Sess. 349 (1988).

The Secretary cannot waive or amend the statutory provision. The Secretary, however, interprets this provision to apply only to grants or contracts to operate targeted assistance programs. It does not limit an SEA's or LEA's authority to contract with an individual or a for-profit corporation to purchase specific goods or services—for example, to purchase materials to provide specific services, to secure audit services, or to lease conference space—to assist the SEA or LEA in carrying out a targeted assistance program.

Changes: None.

Comment: A number of commenters requested that § 298.12(a)(2) use the language of the Act to describe the programs to acquire and use instructional materials. The commenters pointed out that §§ 298.12(a)(1), 298.12(a)(3), and 298.12(a)(4) used the language in section 1531(b). They contended that to edit § 298.12(a)(2) might limit the types of programs and SEA or LEA might conduct under this area of targeted assistance.

Discussion: In order to avoid any confusion concerning the programs authorized under section 1531(b) of the Act, the Secretary agrees that it is appropriate to use the exact language of the Act in all of the areas of targeted assistance listed in § 298.12.

Changes: Sections 298.12(a)(2), 298.12(a)(5) and 298.12(a)(6) are modified accordingly.

Comment: Several commenters addressed the provision in § 298.12(b) concerning purchasing equipment under chapter 2. One commenter recommended that only computer hardware be allowable.

One commenter felt that the Act implicitly authorizes expenditures for equipment and, therefore, § 298.12(b) is unnecessary. One commenter believed that the purchase of equipment under chapter 2 should be coordinated with other Federal assistance programs. One commenter requested that the types of equipment that are permissible be pointed out. One commenter recommended that administrative and management technology expenditures be allowed.

Discussion: Under section 577(1) of chapter 2 of the ESEA, an LEA was authorized to use chapter 2 funds to purchase "instructional equipment and materials suitable for use in providing education in academic subjects . . ." So long as the equipment met those requirements, it did not need to be tied to any other chapter 2 activity. Unlike section 577(1) of chapter 2 of the ESEA, section 1531(b)(2) of the Act does not authorize the use of chapter 2 funds to purchase general instructional equipment as a program in and of itself—that is, the purchase of general instructional equipment is not a "program," per se. SEAs and LEAs may only make such equipment purchases with chapter 2 funds if the equipment is used as a part of a chapter 2 program to meet one of the areas of targeted assistance in section 1531(b). As a result, § 298.12(b) is necessary because it states the basic rule concerning purchasing instructional equipment. Moreover, because equipment must be part of a targeted assistance program, it is unlikely that

expenditures for administrative and management technology would be allowed.

Changes: None.

Section 298.13—Use of Funds by SEAs

Comment: Several commenters noted that § 298.13(b)(2)(ii) concerning a waiver of the requirement to expend 20 percent of the funds reserved for State use for effective schools programs substitutes an "SEA" for the word "State" in the Act. They contend that this could be detrimental to an SEA in applying for a waiver because the State as a whole may be spending more funds for effective schools programs than the SEA.

Discussion: Section 1521(b)(2)(B) of chapter 2 authorizes a State to request a waiver of the requirement to expend 20 percent of the chapter 2 funds reserved for the State's use for effective schools programs if the "State is spending from non-Federal sources an amount equal to twice as much" as the State is required to spend from chapter 2. The Secretary did not intend to restrict the funds that could be considered in granting a waiver request to only funds expended by the SEA.

Changes: Section 298.13(b)(2)(ii) has been changed to clarify that the non-Federal funds expended for effective schools programs may be funds expended by the State, not merely the SEA.

Comment: Several commenters requested clarification of the time period in which the SEA could spend the 25 percent of its chapter 2 funds reserved for administering chapter 2. Specifically, the commenters requested that the time period for those expenditures coincide with the period for which the funds are available for use.

Discussion: Section 1521(b) prohibits an SEA from expending "more than 25 percent of funds available [to the State] in any fiscal year" for State administration of programs under this part. The Secretary interprets the phrase "in any fiscal year" to clarify the amount of funds on which the 25 percent limitation is calculated—that is, the funds reserved for the State's use from a given fiscal year's chapter 2 grant. An SEA may expend no more than 25 percent of that amount for State administration. In accordance with section 412(b) of GEPA, however, the SEA may expend those funds during the fiscal year for which they were appropriated or during the succeeding fiscal year.

Changes: None.

Section 298.15—Evaluations and Reports

Comment: A number of commenters responded to § 298.15 on evaluations and reports. For commenters recommended that the types of chapter 2 services provided to private school children be specifically identified in the annual report. One commenter suggested that the services provided by pupil services personnel be included in the annual report. One commenter objected to the provision in § 298.15(b)(3) that an "SEA shall provide other information to the Secretary as may be required for program evaluation" because this provision could cause an unreasonable burden.

Discussion: Section 298.15 accurately reflects the evaluation and reporting requirements in sections 1522(a)(6)-(7), 1533(a)(4), and 1573 of the Act. The Secretary believes that the services provided by pupil services personnel would be required to be listed under § 298.15(b)(1)(ii)—the types of services provided. The Secretary does not believe it is necessary to require an SEA to distinguish between the services provided to public and private school children, although the SEA is free to do so. Finally, the provision in § 298.15(b)(3) that an "SEA shall provide other information to the Secretary as may be required for fiscal audit and program evaluation" is specifically required by section 1522(a)(7) of the Act.

Changes: None.

Section 298.23—Supplement-Not-Supplant

Comment: A number of commenters suggested that § 298.23 be expanded to include examples of how activities and programs funded with non-Federal funds could be supplemented with chapter 2 funds without supplanting the non-Federal funds.

Discussion: Section 298.23 of the final regulations accurately states the supplement-not-supplant requirement in section 1571(b) of the Act. Application of this requirement is dependent upon the specific circumstances in an SEA or LEA and therefore makes the kind of generalizations needed for regulations difficult. The Secretary appreciates the need for additional guidance in this area, however, and will include examples of specific instances of supplanting in a revised nonregulatory guidance document.

Changes: None.

[FR Doc. 90-6818 Filed 4-17-90 8:45 am]

BILLING CODE 4000-01-M